TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 469

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 17, 1936.

CERTIORARI GRANTED OCTOBER 26, 1936.

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PETITION FOR THE ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.

Filed June 9, 1936.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT, JUNE TERM, 1936.

National Labor Relations Board, Petitioner,
vs.
Washington, Virginia and Maryland Coach Company, Respondents.
} No. 4075.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Fourth Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public No. 198, 74th Congress, 49 Stat. 10, 29 U. S. C. A., Section 151, *et seq.*), known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by said Board in a proceeding instituted by it against respondent, Washington, Virginia and Maryland Coach Company. Said proceeding is known upon the records of the Board as Case No. C-63, the title thereof being "In the Matter of Washington, Virginia and Maryland Coach Company, a Corporation, and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division No. 1079, et al."

In support of this petition, the Board respectfully shows:

(1) Respondent is and at all times hereinafter mentioned was a corporation organized and existing by vir-
(2) tue of the laws of the State of Virginia and has and maintains its main office and transacts business in

the City of Clarendon, Virginia, and further maintains an office and transacts business in the District of Columbia.

(2) Respondent operates buses within the District of Columbia, and also between points within the District of Columbia to points within the State of Virginia for the transportation for hire of persons, United States mail, newspapers and occasional express shipments under an interstate permit granted it by the District of Columbia and an intrastate permit granted it by the State of Virginia. Respondent has applied for and received from the Federal Bureau of Motor Carriers, Interstate Commerce Commission, a certificate of convenience and necessity in accordance with the Motor Carriers' Act, 1935 (49 Stat. 543, 49 U. S. C. A., Chapter 8) to engage in interstate commerce.

(3) By reason of the matters alleged in paragraphs (1) and (2) hereof, this Court has jurisdiction of this petition by virtue of Section 10 (e) of the said National Labor Relations Act.

(4) On the 11th day of March, 1936, a charge and a supplemental charge both having been theretofore duly filed with the Board by the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division No. 1079, the Board issued its complaint in said proceeding No. C-63 charging that the respondent had engaged in and was engaging in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, which said complaint, together with a notice of hearing thereon for March 23, 1936, was duly served upon respondent. Thereafter, by order dated March 17, 1936, said hearing was transferred to and continued before the National Labor Relations Board and John M. Carmody was designated Trial Examiner to conduct the hearing in said matter. Thereafter the respondent duly filed its answer.

(3) (5) Thereafter on March 23, 24, 25 and 26, 1936, the Board by a Trial Examiner held hearings upon the allegations of the complaint. Testimony and other evidence with respect to the allegations of said complaint

were adduced. The respondent appeared at the hearing, by counsel, participated therein and offered evidence in its behalf. Respondent's objection to the jurisdiction of the Board was overruled by the Trial Examiner. Respondent's motion to dismiss the complaint at the conclusion of the Board's case was denied by the Trial Examiner.

On April 25, 1936, a notice of further hearing to be held on May 1, 1936, was duly served upon the respondent. On April 27, 1936, the Board issued and duly served notice of the postponement of hearing to May 2, 1936. Thereafter on May 2, 1936, the Board by J. Warren Madden, Trial Examiner, designated as such by the Board on April 28, 1936, in place and stead of John M. Carmody, duly held a further hearing upon the aforesaid charges. The respondent appeared at the hearing by counsel and participated therein and offered evidence in its behalf. A motion made by counsel for the Board to dismiss the complaint as to the allegations of discriminatory discharge of Stanley F. Smith, R. C. Stanton and Harry F. Gildart was granted by the Trial Examiner. Respondent's objection to the holding of a further hearing and the introduction of further testimony was overruled by the Trial Examiner.

(6) Thereafter on the 21st day of May, 1936 the Board having first considered the matter and being sufficiently advised in the premises, and being of the opinion upon all the testimony in evidence that the respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its Findings of Fact and issued and entered the following order directed to the respondent:

(4) "ORDER.

"On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Washington, Virginia, and Maryland Coach Company:

"1. Cease and desist from discouraging membership in Local No. 1079 or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

"2. Cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

"3. Take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act:

(a) Offer to William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, employment in the respective positions formerly held by them with all rights and privileges previously enjoyed; and

(b) Make whole said William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, for any losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum equal to that which each would normally have earned as wages, at the rate set out in the Appendix I (attached hereto and made a part hereof), during the period from the date of his discharge to the date of offer of employment as ordered hereunder, less amounts earned by each during such period."

(7) The said order is, and at all times since said issuance has been, in full force and effect.

(8) Thereafter on the 21st of May, 1936, the said order was served upon the said respondent by mailing a copy thereof postpaid by registered mail to attorneys for respondent in Washington, D. C.

(5) (9) Since the issuance of said order, conferences have been held between representatives of the Board and representatives of the respondent at which conferences the question of whether or not the respondent would comply with said order was discussed. Respondent has failed to comply with said order and does not intend to comply with said order.

WHEREFORE, the Board petitions this Honorable Court for the enforcement of its order of May 21, 1936, and pursuant to Section 10 (e) of said National Labor Relations Act, is certifying and filing with this Court a transcript of the entire record in the proceedings before the Board including the pleadings, testimony and evidence, findings of fact and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in such transcript, and upon the order made and thereupon, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents and representatives to comply therewith.

J. WARREN MADDEN, Chairman.
JOHN M. CARMODY, Member.
National Labor Relations Board.

CHARLES FAHEY,
General Counsel, National Labor
Relations Board, Washington.

(6) DISTRICT OF COLUMBIA, ss.

J. WARREN MADDEN and JOHN M. CARMODY being duly sworn, depose and say that they are Chairman and Member, respectively, of the National Labor Relations Board and make this affidavit on behalf of said Board; that they have read the foregoing petition and have knowledge of the facts stated therein; and that the statements made in the foregoing are true to their best knowledge and belief.

J. WARREN MADDEN,
JOHN M. CARMODY.

Subscribed and sworn to before me this 6th day of June, 1936.

JOHN E. LAWYER,
(Seal) Notary Public, District of Columbia.

My commission expires September 8, 1939.

NOTICE TO RESPONDENT.

(7) Filed June 10, 1936.

UNITED STATES OF AMERICA, SS:

THE PRESIDENT OF THE UNITED STATES,

To the Washington, Virginia and Maryland Coach Company:

GREETING:

YOU ARE HEREBY NOTIFIED that the National Labor Relations Board on June 9, 1936, filed in the United States Circuit Court of Appeals for the Fourth

Circuit, at Asheville, North Carolina, a petition for the Enforcement of a certain Order issued by it on May 21, 1936, against you, in a proceeding pending before said Board, and entitled upon its records, "In the Matter of, Washington, Virginia and Maryland Coach Company, and the Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al., together with a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board, and prayed that said Circuit Court of Appeals take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in such transcript, and upon the order made, a Decree enforcing in whole said Order of the Board and requiring respondent, its officers, agents and representatives to comply therewith. A copy of the petition is attached hereto.

WHEREFORE, you are hereby directed to show, within 10 days from the date hereof, why the prayer of the petition of the said National Labor Relations Board for the Enforcement of its Order issued by it on May 21, 1936, should not be granted.

WITNESS the Honorable John J. Parker, Judge of the United States Circuit Court of Appeals for the Fourth Circuit, this 10th day of June, in the year of our Lord one thousand nine hundred and thirty-six.

JOHN J. PARKER,
Judge of the United States Circuit Court
of Appeals for the Fourth Circuit.

(Memo. of Clerk: Certified copy of notice, together with certified copy of petition, transmitted to Benedict Wolf, Secretary, National Labor Relations Board, Washington, D. C., on June 10, 1936, for service on respondent.)

TRANSCRIPT OF RECORD

(8) **CHARGE.**

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIFTH REGION.

In the Matter of

Washington, Virginia and Maryland Coach Co.
and
Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, and William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, and W. A. Crissman.

Pursuant to Section 10 (b) of the National Labor Relations Act, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, comprising employes of the Washington, Virginia and Maryland Coach Co., and William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton and W. A. Crissman, employes, hereby charge that this employer has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of the said Act, as is shown by the following allegations of fact:

(1) Washington, Virginia and Maryland Coach Co. (hereinafter sometimes for convenience called the "Company" or "employer") is a corporation organized and existing under and by virtue of the laws of the State of Virginia, with its main offices at 2601 Wilson Boulevard, Clarendon, Virginia, and 412 Twelfth Street, Southwest, Washington, D. C. Said Company transports for hire passengers and express from its terminal at 619

Twelfth Street, Northwest, and other points within the District of Columbia to points and places outside of the said District and particularly into points within the neighboring States of Virginia and Maryland; and from points and places in the States of Virginia and Maryland to points and places within the District of Columbia; all of which aforesaid operations occur in the course and current of commerce among the States, are an integral part of the operations of instrumentalities of such (9) commerce and constitute commerce among the several States.

(2) Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, affiliated with the American Federation of Labor, is an unincorporated association and a lawful labor organization existing for the purpose, in part, of dealing with the employer of its members concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work; said Local Division No. 1079 includes in its membership persons employed by said Company, said persons being engaged in operation and maintenance. Said Local Division No. 1079 has as members 53 of the approximately 75 employes of the Company.

(3) Petitioners William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton and W. A. Crissman are employes of the Company as aforesaid, and are members of Local Division No. 1079. All of said individual petitioners were, prior to the acts complained of below, employed as bus drivers by the said Company at approximately 40 cents an hour.

(4) Respondent, said Washington, Virginia and Maryland Coach Co., is guilty of a violation of the National Labor Relations Act, Section 8, subsections (1) and (3), for the lay-off or discharge of William H. West, an officer of the said union and an employe of said Company for approximately three years, and discharged or laid off on, to-wit, March 4, 1936, at 2:00 P. M., because he was a member of said union and because of his activities as a member of said union in attempting to negotiate

in behalf of other union members with the said Company.

(5) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) thereof, for the lay-off or discharge of H. M. Hall, its employe, employed for approximately two and one-half years and discharged or laid off on, to-wit, March 4, 1936, at 2:55 P. M., because he was a member of said union and because of his activities as a member thereof.

(10) (6) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3), for the lay-off or discharge of Charles O. Magaha, an employe of the said Company for two years and discharged or laid off on, to-wit, March 4, 1936, at 2:20 P. M., because he was a member of said union and because of his activities as a member of said union.

(7) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3), for the lay-off or discharge of Stanley F. Smith, an employe of the said Company for four and one-half months and discharged or laid off on, to-wit, March 4, 1936, at 2:05 P. M., because he was a member of said union and because of his activities as a member of said union.

(8) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3), for the lay-off or discharge of R. C. Stanton, an employe of the said Company for three months and discharged or laid off on, to-wit, March 4, 1936, at 2:10 P. M., because he was a member of said union and because of his activities as a member of said union.

(9) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3), for the lay-off or discharge of W. A. Crissman, an employe of the said Company for over five years and discharged or laid off on, to-wit, March 4, 1936, at 3:20 P. M., because he was a member of said union and because of his activities as a member of said union.

(10) By reason of the unlawful acts of the respondent alleged in this charge, said respondent has aroused and fostered a feeling of rivalry and bitterness among their employes and as a result thereof there is a great spirit of unrest among all the employes, which is constantly being stimulated by the said defaults of said respondent and which tends to create and is creating conditions leading to industrial strife and unrest, which has the necessary effect of burdening or obstructing and affecting commerce. Complainants further charge that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

(11) WHEREFORE, petitioners pray that this Honorable Board issue and cause to be served upon the parties its complaint naming the Washington, Virginia and Maryland Coach Co as a party hereto, said complaint stating the charges herein; that a hearing thereon at an early date and at a convenient place be ordered at which petitioners, Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, and William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton and W. A. Crissman may be allowed to intervene and to present testimony; that after such hearing the Board state its findings of fact and cause to be issued and served upon said Company an order requiring it to cease and desist from violating Section 8, subsections (1) and (3) of the National Labor Relations Act, and further requiring it to take such affirmative action, including reinstatement of the said William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton and W. A. Crissman, with back pay, as will further effectuate the policies of the said Act; and further requiring said respondent to make reports from time to time to this Board showing the extent to which it has complied with said order, and for such other and further relief as the exigencies of the case may require.

LOCAL NO. 1079, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA.

By.....

(s) WILLIAM H. WEST,
WILLIAM H. WEST,
Individually and as Financial Secretary-Treasurer.
(s) H. M. HALL,
H. M HALL,
(s) CHARLES O. MAGAHA,
CHARLES O. MAGAHA,
(s) STANLEY F. SMITH,
STANLEY F. SMITH,
(s) R. C. STANTON,
R. C. STANTON,
(s) W. A. CRISSMAN,
W. A CRISSMAN.

CHARLTON OGBURN,
ARTHUR E. REYMAN,
Attorneys for Petitioners,
Union Trust Building,
Washington, D. C.

(12) WASHINGTON,
District of Columbia, ss.:

WILLIAM H. WEST, being duly sworn, deposes and says that he is Financial Secretary-Treasurer of Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, petitioner in the above entitled matter; and that the facts alleged in said petition are true.

(s) WILLIAM H. WEST.

Subscribed and sworn to before me this 5th day of March, 1936.

(Seal)

(s) MARY G. KITE,
Notary Public, D. C.

My Commission expires August 10, 1939.

SUPPLEMENTAL CHARGE.

(13) UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIFTH REGION.

In the Matter of

Washington, Virginia and Maryland Coach Co.
and
Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, et al.

Heretofore on March 5, 1936, the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, comprising employes of the Washington, Virginia and Maryland Coach Co., and certain individual members of said Local Division No. 1079, employes of said Company, filed their charge against said Company pursuant to Section 10 (b) of the National Labor Relations Act, charging that the said Company, employer, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of the said Act, as shown by the facts alleged in that charge.

Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick, members of said Local Division No. 1079 and employes of said Washington, Virginia and Maryland Coach Co., also charge hereby that this Company has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of the said Act, as is shown by the following allegations of fact:

(1) Respondent, said Washington, Virginia and Maryland Coach Co., is guilty of a violation of the National Labor Relations Act, Section 8, subsections (1) and (3), for the lay-off or discharge of Joseph R. Harmon, an employe of the said Company for approximately eight years and six months and discharged or laid off

on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(14) (2) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3), for the lay-off or discharge of George Bell, an employe of the said Company for aproximately six weeks and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(3) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3), for the lay-off or discharge of Theodore W. Frederick, an officer of the said union and an employe of said Company for approximately seven years and seven months and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union in attempting to negotiate in behalf of other union members with the said Company.

(4) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of Joseph A. Garrison, an employe of the said Company for approximately two years and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(5) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of Lawrence Chase, an employe of the said Company for approximately one year and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(6) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of Robert T. Smith, an employe of the said Company for approximately three years and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(7) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of Edward Moore, an employe of the said Company for approximately one year and two months and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(8) Said respondent is guilty of a violation of the
(15) said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of George Birch, an employe of the said Company for approximately seven years and seven months and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(9) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of C. McCauly, an employe of the said Company for approximately one month and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(10) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of Joseph McDonald, an employe of the said Company for approximately one year and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(11) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of Harry F. Gildart, an employe of the said Company for approximately nine months and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(12) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of James Atwell, an employe of the said Company for approximately six years and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(13) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of Philmore Frederick, an employe of the said Company for approximately five years and discharged or laid off on, to-wit, March 6, 1936, because he was a member of said union and because of his activities as a member of said union.

(14) Said respondent is guilty of a violation of the said Act, Section 8, subsections (1) and (3) for the lay-off or discharge of Roy Miller, an employe of the said Company for approximately six months and discharged or laid off on, to-wit, March 6, 1936, because he was a (16) member of said union and because of his activities as a member of said union.

(15) By reason of these additional unlawful acts of respondent, alleged in this supplemental charge, said respondent has aroused and fostered a feeling of rivalry and bitterness among its employes and as a result thereof there is a great spirit of unrest among all the employes which is constantly being stimulated by said defaults of said respondent and which tends to create and is creating conditions leading to industrial strife and unrest, which has the necessary effect of burdening or obstructing and affecting commerce. Complainants further charge that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

WHEREFORE, these petitioners adopt the prayers of the charge heretofore filed herein, as aforesaid, on March 5, 1936, requesting that this Honorable Board issue and cause to be served upon the parties its complaint naming the Washington, Virginia and Maryland Coach Co. as a party thereto, said complaint stating the charges therein, and the other relief prayed for in the prayers of the original charge; and that Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick may be allowed to intervene and to present testimony at a hearing before this Board, and that after such hearing the Board state its findings of fact

and cause to be issued and served upon said Company an order requiring it to cease and desist from violating Section 8, subsections (1) and (3) of the National Labor Relations Act and further requiring it to take such affirmative action, including reinstatement of the said Joseph R. Harman, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick, with back pay, as will further effectuate the policies of the said Act; and for such other and further relief as the exigencies of the case may require.

LOCAL NO. 1079, AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA.

(s) CHARLTON OGBURN,

CHARLTON OGBURN,
ARTHUR E. REYMAN,
Attorneys for Petitioners,
Union Trust Building,
Washington, D. C.

(17) WASHINGTON,
District of Columbia, ss:

CHARLTON OGBURN, being duly sworn, deposes and says that he is attorney for Local Division No. 1079, Amalgmated Association of Street, Electric Railway and Motor Coach Employes of America, et al., petitioners in the above entitled matter; that to the best of his knowledge and belief the facts therein alleged are true; and that he makes this affidavit in the absence of officers of the said union and the individual petitioners

(s) CHARLTON OGBURN.

Subscribed and sworn to before me this 10th day of March, 1936.

(s) MARY G. KITE,
(Seal) Notary Public, D. C.

My commisison expires August 10, 1939.

COMPLAINT.

(18) UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD, FIFTH REGION.

In the Matter of

Washington, Virginia and Maryland Coach Company, a Corporation, *and* Local Division No. 1079, Amalgamated Association of Strete, Electric Railway and Motor Coach Employees of America, and William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, W. A. Crissman, Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry R. Gildart, James Atwell, Roy Miller and Philmore Frederick.	Case No. V-C-14

It having been charged by Local Division No. 1079 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America and William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, W. A. Crissman, Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick that the Washington, Virginia and Maryland Coach Company, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Regional Director for the Fifth Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and

Regulations, Series 1 (General Rules and Regulations), Article IV, Section 1, hereby issues this complaint and alleges the following:

1. The respondent is a corporation organized under and existing by virtue of the laws of the State of Vir-
(19) ginia, having its principal offices at 2601 Wilson Boulevard, Clarendon, Virginia, and 412 Twelfth Street Southwest, Washington, District of Columbia.

2. The respondent owns, operates and controls, and at all the times hereinafter mentioned has owned, operated and controlled motor bus transportation lines for the transportation of passengers and express for hire from its terminal at 619 Twelfth Street, Northwest, Washington, District of Columbia, and other points and places within the District of Columbia, to points and places outside of the District of Columbia, and particularly to points and places within the States of Virginia and Maryland; and from points and places within the States of Virginia and Maryland to points and places within the District of Columbia.

3. The respondent owns, operates and controls, and at all times hereinafter mentioned has owned, operated and controlled, at 2601 Wilson Boulevard, Clarendon, Virginia, a garage and repair shop at and in which the motor buses and coaches owned and operated by the respondent over its lines, as described in paragraph two (2) above, are serviced, repaired and mechanically maintained in the course of transportation for hire of passengers and express from points and places within the District of Columbia to points and places within the States of Virginia and Maryland; and from points and places within the States of Virginia and Maryland to points and places within the District of Columbia, and to make possible and safe their regular, continued and efficient current use in the course of such transportation.

4. The aforesaid operations of the respondent occur in the course and current of commerce within the District of Columbia and among the States and between the District of Columbia and States of the United States, are an integral part of the operations of an instrumen-

tality of such commerce, and constitute commerce among the States and between the District of Columbia and States of the United States.

5. The respondent, by its officers and agents, while engaged in operations as described above, on March 4, 1936, did lay off and discharge William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton and W. A. Crissman, drivers employed by the respondent in the operation of its buses and coaches as described in paragraph two (2) above; and on March (20) 6, 1936, did lay off and discharge Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick, all employed by the respondent at the Clarendon, Virginia, garage and repair shop as described above, and engaged in the servicing, repairing and mechanical maintenance of the respondent's motor buses and coaches as described in paragraph three (3) above, and the respondent has at all times since said dates refused to reinstate said William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, W. A. Crissman, Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick.

6. The respondent, by its officers and agents, laid off and discharged, and refuses to reinstate said William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, W. A. Crissman, Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick, and each of them, for the reason that they, and each of them, joined and assisted a labor organization known as Local Division No. 1079 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, and engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining and other mutual aid and protection.

7. By laying off and discharging said William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton W. A. Crissman, Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick, and each of them, and refusing to reinstate said persons, and each of them, as above set forth, and by all of said acts and each of them, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each (21) of them, did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivisions (1) of said Act.

8. By laying off and discharging said William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, W. A. Crissman, Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick, and each of them, and refusing to reinstate said persons, and each of them, as above set forth, and by all of said acts and each of them, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said William H. West, H. M. Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, W. A. Crissman, Joseph R. Harmon, George Bell, Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase, Robert T. Smith, Edward Moore, George Birch, C. McCauly, Joseph McDonald, Harry F. Gildart, James Atwell, Roy Miller and Philmore Frederick, and each of them, and did thus discourage and is thus discouraging membership in said Local Division No. 1079 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, and by all of said acts and each of them, did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (3) of said Act.

9. The aforesaid unfair labor practices of the respondent have occurred and are occurring in the course and current of commerce within the District of Columbia and among the States and between the District of Columbia and States of the United States and, on the basis of experience in the motor bus transportation and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof, by impairing the efficiency, safety and operation of instrumentalities of such commerce.

10. The aforesaid acts of the respondent enumerated in paragraphs 5, 6, 7, 8, and 9 above constitute unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of said Act.

WHEREFORE, the National Labor Relations Board, (22) on the 11th day of March, 1936, issues its complaint against the Washington, Virginia and Maryland Coach Company, respondent herein.

NOTICE OF HEARING.

PLEASE TAKE NOTICE that on the 23rd day of March, 1936, at 10:00 o'clock in the forenoon, at the United States Tariff Commission Building, F St. between 7 and 8 Sts. Northwest, Washington, D. C., in the hearing room located on the third floor of said Building, a hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with its Rules and Regulations—Series 1, Article IV, and Article II, Section 22, on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testmony.

You are further notified that you have the right to file with the Regional Director for the Fifth Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the Complaint attached hereto, within five (5) days from the date of service of said Complaint.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its Complaint and Notice of Hearing to be signed by the Regional Director for the Fifth Region on the 11th day of March, 1936.

(s) BENNET F. SCHAUFFLER,
Regional Director for the

ORDER DESIGNATING TRIAL EXAMINER.

(23) NLRB-47

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 16th day of March, 1936.

Present: J. Warren Madden, Chairman; John M. Carmody.

In the Matter of

Washington, Virginia and Maryland Coach Company *and* Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al.	Case No. V-C-14.

A charge having been filed in this matter, and it having appeared to the Regional Director of the Fifth Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that John M. Carmody act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

(Seal) BENEDICT WOLF,

BENEDICT WOLF, Secretary.

ORDER TRANSFERRING PROCEEDING TO NATIONAL LABOR RELATIONS BOARD.

(24) UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 17th day of March, 1936.

Present: J. Warren Madden, Chairman; John M. Carmody.

In the Matter of

Washington, Virginia and Maryland Coach Co. *and* Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al.	Case No. V-C-14.

A hearing having been ordered in the above matter, and it being deemed by the National Labor Relations Board necessary in order to effectuate the purposes of the National Labor Relations Act that the above-entitled matter be transferred to and continued before it,

IT IS HEREBY ORDERED, in accordance with the National Labor Relations Board's Rules and Regulations —Series 1, Article 2, Section 35, that the aforesaid matter be and it is hereby transferred to and continued before it, and that John M. Carmody be designated as the Agent of the National Labor Relations Board to conduct the hearing in said matter.

By direction of the Board:

(Seal) BENEDICT WOLF,

BENEDICT WOLF, Secretary.

OBJECTION TO JURISDICTION OF WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, RESPONDENT.

(25) Received March 23, 1936.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of

Washington, Virginia and Maryland Coach Company, a corporation, *and* Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al.	Case No. V-C-14.

Comes now Robert E. Lynch and William J. Hughes, Jr., Investment Building, Washington, D. C., attorneys for respondent, Washington, Virginia and Maryland Coach Company, and appearnig specially for the purpose of objecting to the jurisdiction of the National Labor Relations Board and of J. Warren Madden, Chairman, John M. Carmody and Edwin S. Smith members thereof, does object to the jurisdiction of the said Board

over the said respondent in the proceedings herein on the following grounds:

1. That the National Labor Relations Act is invalid, void and in contravention of the rights, privileges and immunities of said respondent in that:

(a) It delegates legislative power to the said Board in violation of Section 1, Article 1 of the Constitution of the United States.

(b) It delegates judicial power to the said Board in violation of Section 1 and Section 2, paragraph 1, Article 3 of the Constitution of the United States.

2. That Section 7 as construed and applied herein is
(26) unconstitutional, void and in contravention of the Fifth Amendment of the Constitution of the United States in that the said Board by the issuance of the complaint herein have construed and are construing the said Section 7 to grant an absolute and unqualified right of self-organization, etc., to employees, unrestrained by the necessity of the exercise of such right subject to the rights of respondent and the public.

3. In that Section 8, paragraphs 1 and 3 in themselves, and as construed and applied herein by the said Board, deprive respondent of its liberty and property without Due Process of Law in violation of the Fifth Amendment to the Constitution of the United States.

4. In that Section 10 of the said Act as construed and applied herein denies respondent the right of trial by jury and the right to have facts so tried examined in a court of the United States according to the rules of the common law, in violation of the Seventh Amendment to the Constitution of the United States, and confer upon the said Board judicial power in violation of Sections 1 and 2, Article 3 of the Constitution.

5. That the said act of the said Board in construing and applying the said Act exercises powers contrary to the reservations of the Tenth Amendment of the Constitution and respondent's right thereunder.

WHEREFORE, respondent moves that the complaint herein be dismissed.

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Respondent.
By LEON ARNOLD, Pres.

ROBERT E. LYNCH,
R. E. LYNCH,
WILLIAM J. HUGHES, JR.,
WM. J. HUGHES, JR.
Investment Building,
Washington, D. C.,
Attorneys for Respondent.

ANSWER OF WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, RESPONDENT.

(27) Received March 23, 1936.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of

Washington, Virginia and Maryland Coach Company, a corporation, *and* Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al.	Case No. V-C-14.

Comes now respondent herein and without waiving its objection to the jurisdiction herein, but on the contrary, asserting the lack of jurisdiction of the said Board and relying upon its objections to the jurisdiction of the said Board therein set forth and any and all other objections to the jurisdiction of the said Board for answer to the said complaint herein respectfully avers:

As to the allegations of the Preamble of the Complaint herein respondent has no knowledge.

1. Respondent admits the allegations of this paragraph but says that its principal place of business is at 2601 Wilson Boulevard, Clarendon, Virginia.

2. Respondent admits the allegations of this paragraph but denies that it now operates any motor bus transportation line in the State of Maryland.

3. Respondent admits the allegations of this paragraph except in so far as it refers to the State of Maryland as to which it says that it does no business in the State of Maryland at this time.

4. As to the allegations of this paragraph respondent is informed and advised that the said allegations are conclusions which respondent need not admit or deny. In so far as they are not conclusions respondent denies (28) them.

5. Respondent admits the allegations of this paragraph.

6. Respondent denies the allegations of this paragraph.

7. Respondent is advised that the allegations of this paragraph are conclusions which respondent need not admit or deny; in so far as they are not conclusions respondent denies them.

8. Respondent denies the allegations of this paragraph.

9. As to the allegations of this paragraph, respondent is advised that they are conclusions which need not be admitted or denied, in so far as they are not conclusions respondent has no information as to the experience of Bernard F. Schauffler, Regional Director for

the Fifth Region, Labor Relations Board, complainant herein, in motor bus transportation and other industries. The remaining allegations of said paragraph respondent denies.

10. The allegations of these paragraphs being conclusions, respondent is advised that it need not admit or deny them; in so far as they are not conclusions respondent denies them.

11. As and for a further answer to the allegations of the complaint herein and without waiving its jurisdictional objections herein made, respondent shows it is a corporation organized under the laws of the State of Virginia, having its principal place of business in Clarendon, Virginia; that it is now and has been for many years past operatng a bus business for transportation of passengers from points in Virginia to points in the District of Columbia and return, that the acts of respondent are subject to the regulation of the Public Service Commission of the State of Virginia, including among other things a maximum rate of fare to be charged from point to point. Respondent maintains a garage in Clarendon, Virginia, wherein busses are serviced and repaired and in which mechanics, cleaners and washers are employed. There is also employed by respondent at Clarendon, Virginia, office employees who keep and maintain books and records of the respondent. Respondent employs approximately 80 persons, of which approximately 48 are bus drivers, 25 mechanics and the remaining number constitute the office force.

(29) 12. Respondent alleges that its President is Leon Arnold, its Vice-President is Joseph L. Arnold, its Secretary and Treasurer is H. H. England. The said President has been a pioneer in motor bus transportation, and as far back as 1921 organized and managed the Washington Rapid Transit Company, which was the first motor bus company giving general passenger service in Washington, D. C.; thereafter the said Leon Arnold organized the Washington Motor Coach Company which Company was the first company to operate a motor bus service between Washington and Baltimore, Maryland, Washington and Atlantic City, New Jersey, and Wash-

ington and Annapolis, Maryland; that thereafter the said Leon Arnold organized the present corporation, respondent herein, in the year 1926 and has been President and General Manager of the said company since that time. That prior to the organization of the present company the said Leon Arnold had, from his experience in the operation of other bus companies, adopted a consistent policy of fairness to his employees and had enjoyed continuously pleasant relations with his employees as a result thereof and was unharassed by labor troubles of any kind; that when the said Leon Arnold became President of the present corporation, respondent herein, he brought to the management of that corporation his experience aforesaid and continued the policy of maintaining fair and friendly relations with his employees; that the respondent corporation has always enjoyed such friendly relations with its employees, and during its existence no strike or labor disturbance of any kind has occurred in the operation of respondent's business. Respondent avers that at all times prior to the activities alleged in the complaint herein the wages paid its employees, their hours of service and working conditions were satisfactory to the said employees; that at no time in the history of the company has any complaint, formal or otherwise, been filed by its employees in any concerted way or otherwise, with the management of the said company; that any difference between the company and any of its employees was merely routine in character and of an individual nature such as is likely to arise in the conduct of any business such as respondent's; that no "labor" difference or "labor problem" existed in the operation of respondent's business; that its employees were (30) loyal to their employer and voiced from time to time their satisfaction with their work and wages, all of which was reflected in the labor turn-over in respondent's business which evidenced far less change in personnel than the ordinary business of this character. Respondent in turn had no complaint to make of the conduct of its personnel viewed as a whole and any criticism of its personnel related to individual members thereof and not to the personnel of the company as a whole, and this condition existed from the formation of the company and up to September, 1935, and the months succeeding, all as hereinafter set forth.

13. That on or about October first, 1935, the management of the respondent corporation began to notice a change for the worse in the work of its shop employees and equipment repairmen, taken as a whole; that the said employees seemed to be less efficient and not as willing as *theretofor*, that the atmosphere of respondent's garage, which was required to be kept open day and night, seemed to become less friendly and the relations of respondent's employees with each other seemed to be less pleasant; that there was less co-operation between the employees with each other and with the management; that this condition was reflected in the fact that more and more buses were compelled to be taken into the garage for repairs during business hours; that breakdowns on the road became more frequent; more time was consumed in making repairs and the repairs became less permanent in character and in general, from the management's experience in the bus business, it became apparent that something out of the ordinary was occurring which must be located and remedied.

14. That the management of respondent corporation thereupon began an investigation and attempted to locate the cause of the altered conduct of its employees and their apparent decrease in efficiency; that various remedial measures were taken by the management but that no permanent remedy was found, and conditions in respondent's Clarendon repair garage continued as above described until on or about February 1, 1936, at about which time the said management determined that various employees were becoming so inefficient that it would be necessary to replace them in the near future. Shortly thereafter it undertook to "break in" men to take the place of six bus drivers which it had already determined must be discharged. In addition the man-
(31) agement held conferences with a view to weeding out the less efficient employees in the repair shop.

15. Thereafter the management, on or about February 28, 1936, learnt for the first time efforts were being made to form a labor union among employees. Respondent herein subsequently learned that a person going under the name of Giffin who makes his living by persuading employees to form a union for their own benefit in

company where no union had before his arrival existed, came to respondent on or about September 1, 1935, and disguised as a workman and pretending to need work, persuaded respondent to employ him as a working mechanic. Thereafter the said Giffin, as respondent is informed and believes and hence avers, pretended to work in respondent's repair garage as a workman but, in reality, his principal occupation therein was to persuade several employees of the night and day force in the garage to form a nucleus of employees which in turn was to use Giffin's arguments to persuade other employees that it was to their benefit to create a labor union. Efforts to form the said union met with obstacles by reason of the fact that no union had theretofore been formed in respondent's business and its employees were unaware of the advantage to be derived from a labor union, and hence it was necessary to explain to the said employees in what a labor union consisted, in what way it would operate and what advantages would be derived therefrom. As a result of this ignorance on the part of respondent's employees many employees were, as respondent is informed and believes and hence avers, unconvinced of the advantages of joining such a union, and a substantial number of them refused to join the said union. Thereafter, the said Giffin, having completed his organization work and having voluntarily left respondent's employ on or about October 1, 1935, finding that the employees he had won over to the formation of a union were not meeting with success in so forming a union himself returned surreptitiously to respondent's premises and entering the recreation room to which all but employees are forbidden entrance, on at least one occasion actively exhorted respondent's bus drivers to form the union, the said Giffin falsely pretending himself to be a bus driver in respondent's employ.

(32) 16. Thereafter the work of organizing the union still lagging and proving unsuccessful, the said Giffin sent among respondent's employees a professional labor organizer by the name of Clark, who respondent is informed and believes is fourth Vice President of the Amalmagated Association of Street Electric Railway and Motor Coach Employees of America. The said Clark, respondent is informed and believes, completed the organization of the

said union whose existence respondent discovered, as aforesaid, on or about February 28, 1936.

17. Upon being advised that a labor union was being formed among respondent's employees, respondent made no effort to interfere with, restrain or coerce employees with respect to any right of self-organization or in their efforts to form or join or assist a labor union. It was, however, brought to respondent's attention that there was a division of opinion among the said respondent's employees as to whether they desired to form a labor union. Certain of the employees informed respondent that they were opposed to the formation of a labor union, and certain other employees' wives, fathers and other relatives likewise advised respondent that employees had spoken to them of the prospective labor union and were opposed to it. From the information coming to respondent in this way, respondent concluded that there was a substantial difference of opinion in respect to the formation of the said union among its said employees. Respondent was likewise advised by certain employees that they had, in fact, joined the union, but that they had been coerced into joining it by the argument that they could join at that time for $2.00 whereas later on it would cost them $15.00 and, inevitably, they would be compelled to join. Respondent is informed and believes and hence avers that at no time did the number of employees in the said union exceed 57; of these 30 members of the said union have come to respondent and stated that they are opposed to the union and would like to resign from it. Several of the said employees have advised respondent that they are afraid to resign from the said union because they have been told that the said union will control employment in respondent's business and if they resign from the said (33) union they will not continue to be employed. Respondent likewise has been requested by relatives of various members of the said union to have its President approach the various members aforesaid and speak to them privately relative to their membership in the said union, but this the President of respondent has consistently refused to do, though he has discussed it from time to time with various members of the said union and groups of his employees who have voluntarily come to him. Respondent avers that at no time has it ever threatened any

of its employees, or any group thereof, that it will discriminate in regard to the hire or tenure of employment or any term or condition of employment by reason of any employee's membership or non-membership or any group of employees' membership or non-membership in any labor organization. Respondent likewise avers that it has never at any time attempted to interfere with, restrain or coerce employees in the exercise of their right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

18. On or about February 28, 1936, various patrons telephoned respondent's offices and appeared at respondent's terminal in person and stated that they had been informed that respondent's busses would discontinue service on February 29, 1936, that respondent's employees were going on a strike on that date. Said patrons also stated that they had heard that there was ill feeling between the employees and respondent, and that the employees had threatened to wreck one of respondent's busses. False reports were likewise made to the police, as respondent is informed and believes, that brakes on respondent's busses were ineffectual and defective, and that there was danger that the drivers would lose control of such busses. Respondent's management believed as a result of the reports above referred to that a concerted effort was being made by various persons inimical to respondent's business to injure respondent in the esteem of the public and to hurt respondent generally and harass it in the conduct of its business.

19. Considering the entire situation, bearing in mind the events which had occurred from September, 1935, on-
(34) ward, respondent's management decided the drastic measures must be taken to preserve the good will and efficiency of the company and to continue its operation. It thereupon determined on or about February 28, 1936, to discharge the six bus drivers hereinbefore referred to for whom understudies had been in the course of being broken in. In addition respondent, feeling alarmed at the reports from members of the public about the

brakes on its busses and feeling some concern, lest by some possibility, some of its employees might harbor a grudge against the company and tamper with the brakes, determined as a measure of protection to itself, to the drivers of the busses and to the public to discharge such of the employees of the repair shop as were least efficient, many of whom appeared to respondent to be disaffected and who appeared to be idling away their time in secret huddles and discussions instead of being engaged in their usual work.

Respondent avers that its precautionary action in discharging its inefficient employees was well-founded inasmuch as on the following day one of its discharged employees, a member of the union herein, was reported to have been discovered tampering with and loosening the brakes on one of its busses in an open lot adjoining the repair shop. Respondent avers that when it discharged the fourteen mechanics herein, it did not know whether they were union men or not.

20. Respondent avers that the National Labor Relations Act as construed and applied herein by defendants herein in approving the issuance of the complaint and more particularly in holding that the discharge of the employees herein mentioned constitutes an unfair labor practice in that it amounts to interference with, restraint or coercion of employees and the exercise of their right to organize, to form, to join or to assist a labor organization, etc., within the meaning of Section 7 and Section 8 (1) of the Act, or as constituting a discrimination in regard to hire or tenure of employment within the meaning of Section 8 (3) of the Act, is a deprivation of respondent's property without Due Process of Law in violation of the Fifth Amendment of the Constitution in that the actions of respondent were in no way an unfair labor practice, but on the contrary, were the normal and reasonable efforts of respondent to protect its business, its employees and the (35) public, and to preserve its property; that its act in discharging the said employees was in no way for the purpose of interfering with or restraining or coercing its employees in their attempts to form a labor union nor was it a discrimination as to hire or tenure of employment; that the right of employees to organize and

to collective bargaining is not a right unqualified, unrestricted and absolute, but is a right which must be exercised with due respect and regard to the rights of others and their property; that the Act of Congress herein as construed and applied by defendant undertakes to vest jurisdiction in said Board to enquire into and supervise activities of respondent innocent in themselves, in no way connected with interstate commerce and in no way an interference with the right of employees to organize or to bargain collectively, or other rights of employees. That the complaint herein fails to charge that respondent's action in discharging the employees was with the object of destroying the said employees' right to organize or to bargain collectively or was with any wrongful or unlawful intent; that, therefore, the Act of Congress as construed and applied herein has been construed by defendants to prohibit the exercise of a right inherent in respondent as the owner of a business, namely, its right to employ and discharge at will and for good cause its own employees. Respondent therefore avers that respondent's actions herein being entirely reasonable and proper are not within the scope of the Act of Congress herein involved. In the event that it be held that respondent's actions are penalized by the said Act and are violations thereof, respondent avers that the said Act is unconstitutional, in violation of the Fifth and Tenth Amendments to the Constitution, and otherwise as averred in respondent's objection to the jurisdiction of the Board filed herein.

WHEREFORE, Respondent moves that the Complaint herein be dismissed.

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
By LEON ARNOLD, President.
LEON ARNOLD.

R. E. LYNCH,
ROBERT E. LYNCH,
WM. HUGHES, JR.,
WILLIAM HUGHES, JR.,
Investment Building,
Washington, D. C.,
Attorneys for Respondent.

(36) **NOTICE OF HEARING.**

UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

In the Matter of

Washington, Virginia and Maryland Coach Co. and Local Divison No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al.	Case No. C-63

Please take notice that the hearing scheduled to be conducted by a representative of this Board on Monday, March 23 at 10 A. M. in the Hearing Room, United States Tariff Commission Building, will take place in the offices of the National Labor Board, Room 406 Denrike Building, 1010 Vermont Avenue, N. W., Washington, D. C., at the same date and hour.

By direction of the Board:

BENEDICT WOLF,
BENEDICT WOLF, Secretary.

Copies sent to:

R. E. Lynch, Esq.,
Washington, Va. & Md. Coach Co.,
Attention Leon Arnold, President
Charleton Ogburn, Esq.

(Seal of National Labor Relations Board)

STENOGRAPHIC REPORT OF HEARING BEFORE JOHN M. CARMODY, TRIAL EXAMINER, ON MARCH 23, 24, 25 AND 26, 1936.

BEFORE THE NATIONAL LABOR RELATIONS BOARD

(43) FIFTH REGION

In the Matter of:

Washington, Virginia and Maryland Coach Company
and
Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 1079 et al.
} Case No. C-63.

Room 407, Denrike Building,
National Labor Relations Board,
Washington, D. C.,
Monday, March 23, 1936.

The above-entitled matter came on for hearing at 10:00 o'clock a. m.

Before: John M. Carmody, Member of Board.

Appearances: Jacob Blum, Charlton Ogburn, Arthur Reyman, For the Union; Robert E. Lynch, Wm. J. Hughes, Jr., For the Company.

PROCEEDINGS

(44) Mr. CARMODY: Are you ready to proceed?

Mr. BLUM: Before we start I would like to make this statement, that Mr. Lynch and I have agreed for the purpose of not interfering with the work of the company, that we would hold the hearing from ten o'clock in the morning until two-thirty and adjourn at two-thirty, because if we continued it would require an entire new force to take over the buses of the company to operate.

If that meets with your approval, I think that we can continue on that basis.

Mr. CARMODY: I brought my lunch, I don't know about the rest of you (Laughter).

Mr. BLUM: There is one other question. An answer has been filed by the Washington, Virginia and Maryland Coach Company, and it was filed after the time for filing an answer had expired, and I believe that Mr. Lynch is going to request, that was my impression, that that answer be received now, am I right on that?

Mr. LYNCH: I understood from the Secretary's call the other day that it could be filed at any time before the hearing.

Mr. CARMODY: It has been accepted.

Mr. HUGHES: We have some objections to jurisdiction, if you would care to hear them, please.

Mr. HUGHES: Shall we proceed with that, Mr. Examiner?

(45) Mr. CARMODY: Yes.

Mr. HUGHES: These objections to the jurisdiction, I think, have already been considered by the Board on prior occasions but it is necessary to file them on behalf of the respondent in this case, in order to protect his rights in the event of eventualities, in connection with the present pending cases, such as the Greyhound case, and other cases.

We have in addition to the objections heretofore filed, one supplemental objection which I would like to file here, with the Examiner's permission. Shall I read it to you?

Mr. CARMODY: You may read it.

Mr. HUGHES: It has not heretofore been filed. We note in going over these charges that while it is alleged that there was discrimination against these employees

by discharging them, that there is not any claim in the charges that that was done for the purpose of hindering or preventing or destroying the right of collective bargaining, and we say that the mere fact that union men have been discharged is not in any way a violation of anyone's rights, because something additional in the sense of some wrong, attempted to be perpetrated by doing so, would have to be brought into the case in order to make the charge within the true meaning, as we conceive it, of the Act.

In other words, we say that the company's experience may have been that over a period of time, the union men (46) that we had employed were not efficient, and their work was unsatisfactory, and they may have classified satisfactory and unsatisfactory men in their own minds as union or non-union men, depending upon their own individual experiences. So we say if the management chooses to take that as a rough and ready method of weeding out undesirable employees, we think it has a perfect right to do so and where the charges have failed to interject any element of injustice or deliberate attempt to destroy the right of collective bargaining, we don't think that the Act would apply, and we would like to make that an additional ground of objection to the jurisdiction, and we submit the objection to the jurisdiction in this typewrtten form.

Mr. BLUM: May I call the Examiner's attention to paragraph 7 of the complaint, in answer to that objection?

"By laying off and discharging" the men "and refusing to reinstate said persons, and each of them, as above set forth, and by all of said acts and each of them, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and by all of said acts and each of them, did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, subdivision (1) of said Act."

(47) Now, that same idea is carried out in para-

graph (A) of the complaint, so I feel that that objection is not at all well-founded.

Mr. HUGHES: Replying briefly to that, Mr. Examiner, we say it may readily be possible that it is interfering with their right of collective bargaining in a sense but is not wrongfully interfering with it. That is what we mean.

In other words, it may be restraining them for all we know, but we can't help it. It may be necessary for the protection of the business to get rid of these men, and we say it is just too bad if that is true. In other words, we think if there is going to be a serious charge made here, that any intentional unfairness was perpetrated upon these men, it ought to be in the charges, and it ought not be left to possibilities which may crop up two or three days after a hearing starts.

Mr. CARMODY: I wonder if we are not quibbling words here.

Mr. HUGHES: I hope not, Your Honor. We feel that we ought to bring it to Your Honor's attention.

Mr. CARMODY: I suspect that one of the benefits of the hearing will be to bring out all of these questions, pro and con, and if we were to undertake to match the answer of the complaint word for word, and meaning for meaning, as each of us interpreted the meaning of (48) words, we would never get to the hearing at all. I am perfectly willing to receive your objection to that, and overrule the objection, but as a matter of record I am glad to have it here, but you may proceed with the business at hand.

Mr. BLUM: I want to offer first the exhibit known as Board's Exhibit No. 1, which contains rules and regulations, charges filed by William H. West, supplementary charges filed Charlton Ogburn and *and* Arthur Reymon, attorneys, and notice of serving, and return of services by Bennet F. Schauffler, an order designating John M. Carmody trial examiner, and an order transferring proceeding to the National Labor Relations Board.

Mr. LYNCH: I can say that the complaint which is here, the original complaint apparently filed by Mr. West, I think, Mr. Blum says, we haven't seen a copy of it and may we have an opportunity to look it over for a moment or two?

Mr. CARMODY: You may.

Mr. BLUM: I understood that Mr. Lynch says "complaint". Do you mean "complaint" or "charge"?

Mr. LYNCH: "Charge."

There has also been filed, may it please the Board, the formal written objections to the jurisdiction, and I take it they are overruled, and we are permitted an exception, if that is the practice here.

(49) Mr. CARMODY: You may take an exception.

Whereupon MR. LEON ARNOLD, the Respondent, was called as a witness, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. You are Mr. Leon Arnold? A. That is right.

Q. What is your connection with the Arnold Bus Company, or the Washington, Virginia and Maryland Coach Company? A. I am president and general manager.

Q. Did you bring with you certain records that were requested? A. Yes, sir.

Q. Now, Mr. Arnold, how long has the Washington, Virginia and Maryland Coach Company been in business? A. Ten years.

Q. Is it a corporation? A. Yes, sir.

Q. Where is it incorporated? A. State of Virginia.

Q. When was that? A. 1926.

(50) Q. Where is its principal office? A. Clarendon, Virginia.

Q. Have you any branch offices? A. Yes, sir, 412 12th Street, Southwest.

Q. Where? A. Southwest.

Q. What city? A. Washington, D. C.

Q. Does it have any other branch offices? A. No, sir.

Q. Now, in what cities or States does the Washington, Virginia and Maryland Coach Company operate? A. Washington and Virginia.

Q. Any other States? A. No, sir.

Q. Just how are these operations carried on, and will you describe the manner in which passengers are picked up and discharged? A. In the State of Virginia we have intra-state permits, and in the District of Columbia we have interstate permits, and we are not permitted to carry any D. C. passengers.

Q. What do you mean by that? A. Simply that we could not pick you on this point here, at K Street, and take you over to 20th and K, and let you off. We would have to take you into the State of Virginia.

Q. When you pick up a passenger in Virginia, may
(51) he be dropped in the District of Columbia? A. Yes, sir.

Q. At any point? A. Yes, sir.

Q. Now, you say that in the District of Columbia you have an interstate permit? A. Yes, sir.

Q. What type of tax do you have on your buses? A. What type of taxes?

Q. Yes, what State taxes do you carry? A. We carry the District of Columbia, and the State of Virginia.

Q. When business first started in 1926, how many buses did you have? A. Nine.

Q. How many employees? A. To be frank with you, I just can't tell you the exact number.

Mr. CARMODY: Approximately?

The WITNESS: I would say that we had in the neighborhood of twenty.

Mr. CARMODY: That is all right.

By Mr. BLUM:

Q. They included bus drivers, mechanics, and office
(52) workers? A. Yes, sir.

Q. Now, you call yourself the Washington, Virginia and Maryland Coach Company? A. That is correct.

Q. Why do you call yourself the Maryland Coach

Company? A. For the simple reason that we had an operation in Maryland, which operated out by Chevy Chase Circle, and out through Bradley Park Congressional Country Club, which we have since abandoned.

Q. How long has that been abandoned? A. At least six years.

Q. Six years ago? A. Yes.

Q. How many buses do you have now? A. Forty-eight.

Q. Forty-eight? A. Yes.

Q. And how many employees? A. Somewhere in the neighborhood of eighty.

Q. Eighty employees? A. Yes.

Q. How many of those are drivers? A. I would say around about fifty.

Q. How many mechanics and shop workers? A. I would say in the neighborhood of twenty-five or twenty-
(53) seven.

Q. And the remaining are employees in the office? A. Yes.

Q. Do you recall how many passengers you carried during 1926 when you first organized? A. Not from memory, but I can give it to you exactly.

Q. Will you let me have that? A. I don't have that with me.

I will tell you, maybe Mr. England could give you better than I could, if it is all right for him to give that.

Q. All right, I will ask him that.

Now, who were the officers of the Washington, Virginia and Maryland Coach Company? A. Why, myself president, and Joseph L. Arnold vice president, and Mr. H. H. England, secretary and treasurer.

Q. You said that you were the general manager? A. Mr. England is assistant manager.

Q. Who has charge of the shop where the mechanics are employed? A. Mr. George Wilsey.

Q. Is he here? A. I think so, yes, sir,—no, he is not here, but he will be here a little later.

Q. Who has charge of the hiring and firing of all
(54) employees? A. Mr. Wilsey has full control over the shop.

Q. Of the shop? A. Yes.

Q. Who has control of the drivers? A. Mr. England has control over the drivers.

Q. A short time prior to the discharge of the men in this complaint, a notice appeared in the newspapers for help, put in the paper by your company. Who was responsible for that advertisement? A. Mr. Wilsey inserted that notice.

Q. Did he do it on his own discretion or your request? A. He did after taking it up with me, yes, sir.

Q. Will you explain exactly why you thought it was necessary—or did you have a full personnel at that time? A. We did, yes, sir.

Q. Was the purpose of the advertisement to replace men that you already had in your employ? A. Why, I would say, yes.

Q. What was the reason that you felt that your men ought to be replaced? A. To what length would I be permitted answering that question? Do you want me to answer it fully?

Q. Any length until you are stopped. A. Well, to begin with, I have had about thirteen years experience in bus transportation, and I retain a good record. My (55) big asset has been public relationship, good will. I never had anything else with my employees, and since around about October—

Q. What year? A. of 1935.

Q. All right. Go ahead. A. We have had quite a lot of trouble, inefficiency, in our operations, and on numerous occasions I have taken this up with Mr. Silsey, and Mr. England, and also Mr. England with Mr. Wilsey, wanting to know the reasons. Just what I mean by this inefficiency was the operation of the equipment and the cleanliness of the equipment, and the lack of reason for lots of units that went bad owing to the failure of greasing.

Mr. CARMODY: That is the rolling equipment?

Mr. ARNOLD: Yes, sir.

Mr. CARMODY: Not shop equipment?

Mr. ARNOLD: Rolling equipment.

Mr. CARMODY: All right.

The WITNESS: Mr. Wilsey was more or less in the ark, and Mr. Wilsey had a group of mechanics, all of them, which he had learned everything that they knew, practically, and they had been promoted from washers and greasers, up to mechanics, and they had always been paid in proportion to the job.

(56) About the time that this thing that you ask me about broke, and before that for quite a good while—

By Mr. BLUM:

Q. You are referring to the newspaper advertisement? A. Yes. We noticed that the men were in groups around the garage, talking, and neglecting their work, and Mr. England and Mr. Wilsey and myself talked that over, and when either of us walked in, they simply broke loose, and Mr. Wilsey has told me, and told them about congregating, and not getting the work out.

About in September of 1935—have you a man in this room by the name of Griffin?

Mr. BLUM: Is Mr. Griffin here?

The WITNESS: Would it be possible for me to ask a question?

Mr. BLUM: Of me?

The WITNESS: Yes.

Mr. BLUM: You can ask it. I don't know whether I can answer it.

The WITNESS: I would like to know what affiliation Mr. Griffin has with the union organization.

Mr. BLUM: I couldn't answer that.

The WITNESS: Well, I will proceed, then. I would rather have Mr. Griffin here.

About September, a man—I don't know whether that (57) is his correct name, but that is the name he gave us—came to Mr. Wilsey and asked for a position, and I don't know how many times, but anyhow, he was given a position as a mechanic in the garage. Mr. Griffin worked there for about a month, and always when we

take on a new man there, we have a seniority list all of the way through, and our oldest men get the day work and the new men get the night work, and Mr. Griffin was given a position on day for the simple reason of keeping him under the eye of Mr. Wilsey, to see just how he did his work for a while. That gave him a close contact with our day foreman, and afterwards he was put on—

By Mr. BLUM:

Q. Who is that day foreman? A. Mr. Frederick.

Q. Which Frederick is that? There are two. A. I really don't know his full name.

Q. All right. A. And later he was put on at night, and that put him on contact with the night foreman, Joseph Harman.

We found, around about the time that these newspaper articles that you referred to, broke, that—or maybe a little before—that Mr. Griffin was the one that sowed the seeds there first, with the day foreman and night foreman, and he left after being there a few days, over a month, under pretense of going to Cleveland, Ohio, (58) which he claimed was his home.

Q. You say "sowed the seeds, Mr. Griffin "sowed the seeds". "Sowed the seeds" of what? A. Selling them the idea of the union.

Q. I see. Go ahead. A. Did you get, after he was there, shortly after a month, he left, and went to Cleveland, under the pretense of selling his home. He gave to Mr. Wilsey, while he was there, a telephone number, and after checking the telephone number we found that—when we tried to locate him there—that he was not there, and there was no—that was in some other lady's name that lived at a different place, and if you care to you can bring that out later through Mr. Wilsey and Mr. England; they are more familiar with that than I am.

This condition, more or less, which I am showing to you, disturbed the organization, and must have been—

Q. What condition is that? A. The condition of Mr. Griffin being there at that time, after that it was more noticeable.

Q. Go ahead. A. Some checks that we have with Mr. England, in his possession, and that will be given to you, will more or less show the reasons and inefficiency of men that have been fired.

In regard to drivers, also, he has some records and reports. These drivers were on the road before this hap-
(59) pened, and we were breaking in extra men, and really should—some of them would have been gone before, but owing to the bad men we had to take and break in new men, and as our records will show, we were breaking in extra drivers before this time.

Q. Before what time is that? A. Before the occasion of this newspapers article that you referred to.

Q. During what month was that?

Mr. CARMODY: Does anyone have a copy of that ad, or the date, to refresh Mr. Arnold's mind, and to perhaps keep my own mind straight on it?

Mr. BLUM: I think so. This is a copy of the Washington Herald, Saturday, February 29.

The WITNESS: I just didn't remember the date. I have seen it.

By Mr. BLUM:

Q. How long prior to February 29th were you breaking in these new men? A. On that, I would rather for you to get the definite date from Mr. England, from the records.

Have I answered everything that you would like to have me answer?

Q. So far, yes. Is there any more that you can tell us about that? A. Well, I didn't want to take up too much time.

(60) Q. Go right ahead. We have plenty of time. A. We had such reports coming in to us that the buses were not going to be running, and was it Saturday, the 29th?

Mr. LYNCH: Yes.

The WITNESS: We had six ladies went into our terminal—

By Mr. BLUM:

Q. Were you there? A. No, sir.

Q. Did they speak to you? A. The ladies didn't

but if you want the lady that was spoken to, I would be glad to bring her here.

Q. Don't give us any conversation that you didn't hear and wasn't spoken to you.

Mr. LYNCH: Mr. Chairman, I submit that if certain information was brought to Mr. Arnold, to his attention, he couldn't be there in every part of the bus department at one time, and if certain information was brought to his attention and he relied upon that information and believing the accuracy of the employees or other persons who gave it to him, he would have a right to act upon that, and it he acts upon the information, but the fact that information was brought to him and he relied upon it, I submit to the Board that it would be proper here.

Mr. CARMODY: He is a responsible executive of this company, and I think he might let us know what he (61) did, and then have him tell who told him, the information that he relied upon to act, whether it was as to handling schedules, or something else.

Mr. BLUM: I will agree to that.

The WITNESS: Now, you want the name of the party?

By Mr. BLUM:

Q. That is not necessary. A. Now, just what have you got there?

Q. That you received reports that buses would not be running on the next day after Saturday. A. On the evening after Saturday, the 29th, that there would not be any buses running, and that they were going to strike.

Q. All right. A. Also, information that one boy said he was going to get off the bus at the top of Picket's Hill, and let it go.

Mr. LYNCH: Do you mean driver?

The WITNESS: Yes. Now, those things coming, and with the inefficiency I have set forth there, and which

we will prove by our records, I think pretty well covers it. That is all that I can tell you.

By Mr. BLUM:

Q. Now, during all of this period, did you know, or did any representatives of your company call to your (62) attention the fact that the men had formed or joined a union? A. Yes. I had understood, and I had nothing definite, and I had understood that there had been some employees that had signed up, and I had some of their wives call me up, and different people that were interested.

Q. When did it first come to your attention that some union activities were going on in your place? A. I would say around about Friday or Saturday.

Q. Of what week? A. Of the 29th.

Q. Friday or Saturday of the 29th? A. Yes.

Q. When was it that you first discovered that Mr. Griffin was sowing the seed of unionism? A. I would say after that time.

Q. After the 29th? A. Yes.

Q. I see. Do you know whether any other representatives of your company knew prior to that time that union activities were going on? A. No representatives of the company, no.

Q. Any of the officials? A. Mr. Wilsey is the one that brought that out, the superintendent of the shops.

Q. Do you know whether Mr. Wilsey knew prior to (63) the time that unionization activities were going on?

Mr. HUGHES: I suggest that Mr. Wilsey be asked that.

The WITNESS: He is here now.

By Mr. BLUM:

Q. Did the unionization activities of your men influence you in any way in discharging them? A. They did not. We have still some of them there.

Q. Well, were you in a conference with the regional director of Baltimore after the charge had been filed? A. Yes, sir.

Q. And in that conference did you make a state-

ment to him that you would not fire any more pending the outcome of this proceeding? A. No, I did not tell him that, definitely, but what I did tell him was that—we had that conference, I think, on a Friday, is that correct?

Q. I think so. That is March 6th. A. And we arranged at that time, a previous conference, on Tuesday, the following Tuesday, I did tell Mr. Starr's office that I would not fire any of them between that time—

Q. Between what time? A. Between Friday and Tuesday.

Q. And since this complaint or this charge has been brought, no more men have been fired, have they? A. (64) Yes, sir.

Q. When? A. I can't tell you those things. Mr. England can tell you. I don't know who the men are, but there have been some. There was one fired yesterday.

Mr. CARMODY: Can you hold that question until Mr. England is on the stand?

Mr. BLUM: Yes.

The WITNESS: I don't know just who he was.

Mr. BLUM: I think that is all.

During the racetrack season in Maryland, do you run buses to those tracks? A. Yes.

Q. Under what sort of permit do you operate buses then? A. Under a Maryland permit, but that is more or less what we consider special business, and we get a tag in Maryland and pay the mileage for the time that we run to the race tracks, and the milage that we use during the operating of the track.

Q. How many days a year does that occur? A. I can't just tell you that. I think that fluctuates at different times. Mr. England is in a better position to handle that.

Mr. CARMODY: To what tracks does he operate in Maryland?

The WITNESS: I could tell him that.

(65) Mr. LYNCH: I can get Mr. Hughes to tell you when they run (Laughter).

The WITNESS: We operate to Bowie, to Laurel, and to Havre de Gras, and we haven't operated to Havre de Gras the last couple of years, but we operate to Pimlico, and those three tracks, those are the only three that we have been operating to during the last couple of years.

Q. Do you operate to Hagerstown? A. No, sir.
Q. Marlboro? A. No.
Q. Who issued your interstate permit to do business in the District of Columbia? A. Who gives the interstate?
Q. Yes. A. The Public Utility Commission of the District of Columbia.
Q. Do you get any authority to operate in the District from the Interstate Commerce Commission? A. Yes, sir, that is a new set-up at the present time which we have filed, or there are the necessary papers to be filed in that manner.
Q. There is one other thing, Mr. Arnold. I want to show you this which says "a personal message from Leon Arnold." Will you look at that and can you re-
(66) call the date of that being issued to the employees, and whether it was issued? A. Yes, sir, I remember that distinctly.
Q. What was the date of the issuance of that? A. Now, the date of issuance—I am bad on dates— but I think Mr. England can answer that.
Q. Approximately; it is signed by you. A. I would say approximately about three weeks ago.
Q. Three weeks ago? A. Yes; and I might explain that.

Mr. CARMODY: Is it in evidence?

Mr. BLUM: Not yet. I am going to introduce it.

Mr. CARMODY: Do you want the explanation first?

Mr. BLUM: Yes.

The WITNESS: These personal messages, we have been issuing for quite a number of months to our organization, our complete organization, and they are issued to them in rotation, and it is a regular system that other people, and other *businese* concerns that get up that kind of—those things—and after consulting with us, they got those up eighteen months in advance, and I don't know whether Mr. England can tell you at this time or not, but we would be glad to furnish you with the time that we started with this, and these, to the best of my knowledge and belief, are numbered, or something, in rotation, or taken out in rotation, and we take whichever one that comes, the whole eighteen months.

(67) Q. Then would you say that it is a mere coincidence that this one appeared at the time that you were having this labor difficulty? A. I would swear to that.

Mr. BLUM: When the Examiner finishes with that, I would like to introduce it in evidence.

I offer this in evidence.

Mr. LYNCH: No objection.

Mr. CARMODY: It is admitted.

(The document referred to was marked "Board's Exhibit No. 2" and received in evidence.)

Mr. CARMODY: You say that you buy this in a service: Do you get one each week?

The WITNESS: I sign those every Sunday, and those are given to the employees every Monday.

Mr. CARMODY: Where do you buy them?

The WITNESS: To be frank, I just can't tell you Mr. England can tell you that. He is glad to show you the bills and all of the records, and everything.

Mr. CARMODY: Mr. England, will you be sworn now, please?

Whereupon HAMMOND H. ENGLAND was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

(68) By Mr. CARMODY:

Q. I will ask Mr. England, then, about this particular thing: Where do you buy that service? A. We buy that from a firm in Chicago. I just don't recall the firm right offhand. It is Warren something, but I can furnish the proper name.

Q. Would you do that, please? A. Yes.

Q. Now, do they specialize in transportation? In other words, are these adapted to people engaged in transportation, more particularly? A. They specialize in all business, not only transportation, but grocery stores, and any place that has any number of employees. I would like to explain how they are put out.

We have a book, and we would be very glad to bring it down, furnished by them, and there is each one of these messages pasted in that book, and on the second page of the book there are the numbers, and those numbers are not consecutive, but they are picked out and all of the boxes that we have with those in are numbered to correspond with the numbers on that sheet.

Q. You can buy a certain number? A. Yes.

(69) Q. You don't have to buy a whole set? A. You buy a whole set, and the whole set comes, and it is all set up in this book, and they set it up as to how they shall be given out. Every time we put out one, there is a check mark put at that number, and we can show, as we bring that book down to you, and show since the beginning of this, just how we have followed that system up. From this date to now; and from the time we started, up until this date.

Q. How much in advance of the release do you get the copies? A. That is all sent to us at one time. We have that whole supply in our stock room.

Q. So that you may pick out for any one week, any message that you wish? A. No, we don't pick out any one week. They are all set up in this book, and they are supposed to be taken in rotation, but those numbers, they run from 1 to 72, are not in rotation, and I think first maybe there is one, and the next is sixteen, and then it jumps to twenty-seven, and those numbers are

put down in that book just that way, and we give them out in the exact way that the book calls for.

Q. Would you mind bringing that? A. I would be glad to.

Mr. BLUM: Is it possible for you, Mr. England, to (70) select any one that you want indiscriminately and distribute that one that week?

The WITNESS: I suppose that we could do that, but our records will show, and we have checked in that book, and if you would like to send over for that, that would be seen.

Mr. CARMODY: Perhaps you may send over and get it, if you want to.

The WITNESS: Suppose I have it brought down immediately.

Mr. CARMODY: All right.

Whereupon MR. LEON ARNOLD having been previously duly sworn, resumed the stand, and further testified as follows:

The WITNESS: I would like to say this, in the issuance of these Mr. Reyman or myself do not pick these out. Every Sunday morning when I go over to the office, one of the boxes of these forms is on my desk for me to sign, and that box is taken out by the cashier, and put there.

Mr. HUGHES: Mr. Blum, I assume that both sides of that are in evidence.

Mr. BLUM: The whole thing.

By Mr. BLUM:

Q. You say that since October, you had quite a lot of trouble and inefficiency in operation? What brought (71) that to your attention in October? A. Why, delays, and cleanliness of equipment.

Q. Did you personally notice these things, or was it brought to your attention? A. I have noticed them

myself, and also heard of complaints that have been coming in from the passengers, from the public, in regard to the buses.

Q. What were the complaints, in regard to cleanliness? A. Yes.

Q. And some— A. And some in regard to delays.

Q. Were all of these complaints caused by the people that had been discharged? A. I might say this, that this came to such a point where I recognized a situation for protection of our business, and the relationship that we have had and over the years, which I have related. I didn't feel like I could lose it or corrupt it in any way, and therefore I called Mr. Wilsey in and talked this over with him, and I said, "We have got to do something, and do it before we don't know where we are, because our equipment was going bad, and the names—I put it up to him, in that way, who was the most efficient, and so on and so forth, and Mr. Wilsey made the designation.

Q. Did the complaints come in to you on new buses
(72) or old buses? A. Both.

Q. What was the newest bus that you had in October of 1935? A. I would say the last buses we had six new ones, and probably been in operation six or seven months.

Q. You had complaints on those buses? A. Yes, sir.

Q. Now, were the drivers of these buses dismissed? A. How it that?

Q. Were the drivers of those new buses dismissed? A. I couldn't tell you that. They drive different ones.

Q. They—now, of these men that were fired, do you know whether any of them had been in your employ for a long period of time? A. I would say yes, some of them.

Q. More than five years in some cases? A. Yes; I guess some of them have been there five years, maybe a couple of them.

Q. Any of the men that were retained in your employ just a short space of time, that is, men that were not fired? A. I would rather not give that from memory. Mr. England is in a better position to tell you that.

Q. He can answer that? A. Yes.

(73) Q. Now, when you noticed these men around the garage in groups talking and neglecting their work, that

was in October, wasn't it? A. Well, I would say from then on.

Q. From then on? A. Yes.

Q. Now, what steps did you take to remedy that situation from October to February? A. We just were stumped, as I said awhile ago. We had talked it over with Mr. Wilsey, and I had asked Mr. Wilsey, "What is the matter out here? We are not getting the proper work done here," and he said, "Well, I just can't figure it out. I know that there is something wrong, but I don't know what it is."

Q. Did your revenue decrease? A. Our revenue decrease?

Q. Yes. A. I wouldn't say at that time, no.

Mr. HUGHES: Do you mean net or gross?

Mr. BLUM: Gross.

The WITNESS: I wouldn't say that it did particularly in October, but I would say it did decrease later on.

By Mr. BLUM:

Q. Well— A. Along in the months of January and February.

(74) Q. Wasn't that season on account of the cold weather? A. I wouldn't say so.

Q. Was it a great decrease over the year previous? A. That wouldn't be natural when we put on 21 buses in the last year. It would hardly be that comparison.

Q. When was that? A. We put on 21 additional buses in the past year.

Q. In the past year? A. Yes; and I might say that we had an increase there which showed in 1935 over 1934, 540,000 ple.

Q. Just one more question, Mr. Arnold. When was it, if you know, that Mr. Wilsey discovered that Mr. Griffin had given the wrong telephone number in Cleveland? A. I would rather for Mr. Wilsey to answer that question.

Q. Do you know whether or not Joe Arnold—is he your son? A. That is correct.

Q. —attended a meeting of the union? A. I heard he did, yes, sir.

Q. Did he do that at your direction? A. He did not.

Q. At his own direction? A. He did; and my understanding is that by invitation of two or three of the men; Mr. Frederick, for one.

(75) Q. Do you know how he was dressed when he came to that meeting? A. Yes, I do.

Q. Can you describe that? A. He had on a driver's cap when he left out of the office. I saw him going out of there with a couple of men.

Q. Does he usually wear a driver's cap? A. He does not. He is liable to put on most anything.

Q. And in attending this meeting, he put on a driver's cap? A. That is correct.

Mr. BLUM: That is all.

Mr. LYNCH: The men that he attended the meeting with were they drivers?

The WITNESS: Yes, and they asked him to come over to the union meeting with them.

I don't know about the men that he went with, but I know he was invited by two or three of the men, and Mr. Frederick was one of the men, and the meeting was held at his house.

Mr. BLUM: How did you know about that.

The WITNESS: I have heard him say so, and I have heard two or three of the other boys who heard that invitation.

Mr. BLUM: Any of the boys that were fired?

The WITNESS: I couldn't tell you that.

CROSS EXAMINATION.

(76) By Mr. BLUM:

Q. Mr. Arnold, since 1926, you say that you have been operating the present line? A. Yes.

Q. What is your general experience in the bus business in the District of Columbia and the nearby sections? Tell the Board, please sir, when you first commenced bus

operations? A. I might say that I was a pioneer in the bus operation in the District of Columbia, started in 1921, on 16th Street, and inaugurated that company, and later on, inaugurated the Washington Motor Coach Company, which was the first operation between Washington and Baltimore from the Willard Hotel to the Southern Hotel in Baltimore, and also to Annapolis from the Willard Hotel, to Carvell Hall, and that company was operated under the name of Washington Motor Coach Company, and also from the Mayflower Hotel to Ambassador Hotel at Atlantic City.

Q. At the time when you commenced your operations in the District of Columbia, were there any other bus lines in the operation near? A. Nothing other than sightseeing.

Q. At the time you commenced your operations in the State of Virginia, were they any other bus lines in (77) that section of the country? A. Yes, I purchased a couple of operators out there.

Q. At the time when you commenced, you were the sole operator of buses in that section, that is, the ones that you purchased, and the new routes that you were putting in there, is that correct? A. I would say in that particular locality.

Q. Your principal operations, Mr. Arnold, are the Arlington and Fairfax County, are they not? A. That is a major part.

Q. During the period of time from 1926 to date what has your salary as president and general manager been? A. Not one red cent.

Q. You mean you haven't drawn a salary? A. I haven't drawn a cent. I haven't done anything but put it in.

Q. During most of those years was it a losing business? A. Yes, sir.

Q. Mr. Blum asked you with regard to certain actions which were taken by you, and you have told about certain conferences that you had with Mr. Wilsey, and I will ask whether or not you had conferences from time to time in the last three or four months with Mr. Wilsey and Mr. England relative to the equipment and the operations and delays of buses? A. I have.

(78) Q. State whether or not there came a time when there were certain special conferences called with regard to clutches on the buses? A. Yes.

Q. Tell about that, Mr. Arnold, please? A. We had a lot of trouble with these clutches, and it is my understanding that the condition occurred from a lack of grease.

Q. Are you able to say whether or not in the latter part of February, take particularly the last 15 days of February, whether there was an exceptionally large number of what you call road delays, that is, breakdowns of buses? A. What months?

Q. The latter part of the month of February. A. Yes, sir. The latter part of the month of February and also the first part of March, we had, I would say, more delays than I have had in any operation that I have ever had.

Q. These calls with regard to the cleanliness of the buses, can you state over what period of time they were brought to your attention? Q. Well, we had more of it I will say, in the past four or five months.

Q. Have you personally noticed, at times when you (79) go through the garage, or in the yard of the place where the buses are kept, that the men would not be on their job working, but would be in groups talking? A. On numerous occasions.

Q. Have you called that to the attention of Mr. Wilsey? A. I have.

Q. Have you also called it to the attention of Mr. England? A. I have.

Q. Mr. Arnold, on the 28th of February, on Friday, did there come certain information to you with regard to the possibility of a bus driver leaving the bus and permitting the bus to run at its own accord? A. Yes, sir.

Q. And after that information was brought to you, did you call a conference of Mr. England and Mr. Wilsey? A. I did.

Q. And I will ask you whether or not on the next day, you received a report that there would be no buses running after Saturday night, February 29th? A. On Friday, or Saturday the 29th, that is correct.

I might say that that was not only a report from the terminal, but from quite a few boys operating on the line that passengers had asked in regard to the service, whether it would be operating on the Saturday evening of the 29th.

(80) Q. As a culmination of these inefficiencies, both of the shop and drivers, and the cleaners and the greasters, did you decide to take certain action with regard to your personnel? A. I did.

Q. What was that action that you decided to take? A. Well, I called Mr. Wilsey in, and Mr. England, and we went over it and decided that something had to be done. I asked Mr. Wilsey to give me a report of what he thought was the best way to handle his men, and his report was that the men that we dismissed should be dismissed.

Q. I will ask you whether or not prior to that time you had been breaking in new drivers over a period of time on the buses? A. Yes, sir, we had.

Q. And were any of these persons let go merely because they were members or suspected of being members or having activity with relation to a union? A. It was not, because there were quite a few of them still there. There are several members in there.

Q. There are several members in your organization right now that you have information are members of the union? A. That is correct.

A. I will ask you, Mr. Arnold, if you have ever had a serious accident in your entire career of business in (81) bus operations? A. Very few that I would say were serious.

Q. Have you ever had a case where a bus was completely wrecked and several persons killed, or anything of that kind? A. We have had them wrecked, but not beyond us.

Q. Have you ever had any the last five years, when you have been building up your heavy traffic from Virginia to the District, have you ever had a serious accident? A. Our accidents have been held down to a minimum, and the largest percentage of the time we have had decreases in our liability and property damage insurance.

Q. That showed a decreasing number of accidents? A. That was due to the efficiency of the operation, and we get the reduction on the insurance.

Q. I see. I will ask you whether or not you were fearful that there might be some catastrophe occur if drastic action were not taken?

Mr. BLUM: That is purely conjectural; I object to that.

Mr. CARMODY: I think that the witness had an opportunity to tell the whole story, and it didn't occur to him to volunteer the statement that he discharged these men because he thought that it was going to cause an accident, and I think it is hardly a fair question. If you want to, put it in some other way. It is a leading (82) question, and calls for a conclusion.

Mr. HUGHES: It was in the answer, Your Honor.

Mr. BLUM: This is cross examination.

Mr. LYNCH: That is because you can ask such questions on cross examination. There is a reason why he caused the advertisement to be inserted there.

Mr. CARMODY: I don't think he testified to that, did he?

Mr. LYNCH: The question was whether or not that was an additional reason.

By Mr. LYNCH:

Q. Did there come a time when there was discussion as to the brakes of the buses? A. Yes.

Q. Can you state when that was first? A. I can't say particularly as to the specific date. I think it was somewhere around the 28th or 29th, and I happened to drive into the garage, and one of the drivers was just turning in, and he told me that a policeman had stopped him on M Street, and said that there had been a report made to the Seventh Precinct that our brakes were all in very bad shape, and that it was a pretty serious condition, and a little later on, or why, I can't answer, Mr. Storey of the Traffic Bureau, came over to make an inspection of these brakes, and while inspecting these (83) brakes, to the best of my knowledge and belief, a mechanic by the name of Miller who we had just let go, was going through the back lot and Mr. Storey came into the office and said that a man, he did not know just who it was, but from the information I got from other sources, it was Mr. Miller, who was a mechanic, was

tampering with the brakes and loosening them up, and if you are going to fool with brakes, he couldn't do much with them.

Mr. CARMODY: That is what he said?

The WITNESS: That is what he said, from the Traffic Department, who made his reoprt in the office to me, and I said, "Well, there won't be anything like that occur again" and so he went back, and went to testing the brakes.

By Mr. LYNCH:

Q. I will ask you whether any report had come to the bus company from their drivers that there had been defective brakes before it went to the Police Department first? A. No, sir.

Q. The first report you got was from the Police Department, coming through one of your bus drivers that they had reports that the buses were carrying defective brakes? A. I did not get it from the Police Department, but from the bus driver.

Q. Yes. A. But Mr. Storey came over, and I couldn't (84) say just where he got the information.

Q. Now, the No. 7 Police Station is in Georgetown, and all of your buses travel through that section, don't they? A. That is correct.

Q. Mr. Arnold, from the time of your organization over there, until just a short time ago, have you ever had any trouble with the personnel of the company? A. I never had in this company, nor any other company, which have been quite numerous, that I have operated.

Q. You are also connected with several other companies now, and have been over many years? A. That is correct.

Q. You have been born and raised in the District of Columbia, weren't you? A. That is right.

Q. How old are you? A. 58 years old.

Q. And did this amicable relationship between the employer and employees continue until fairly recently, with relation to the bus company? A. That is correct.

Q. Did some of the employees of your company come to you relative to this matter, and ask you to advise them with regard to whether they should go into the union or not? A. That is correct.

(85) Q. And did you— A. One minute; what is that?

Q. Did any of them come to you and ask whether they should go into the union or not? A. No.

Q. I will ask you whether any of the members of their families called you? A. Yes, sir.

Q. Can you state what you told them? A. Yes, sir, I had one of the boys' wives call me and ask me, would I see her, and I told her yes.

Mr. BLUM: I would like the person identified, if you mention the name, please.

The WITNESS: Mrs. Hartman.

By Mr. LYNCH:

Q. Go ahead. A. And I told her yes, I would be glad to see her, and made an appointment with her, and she asked me, would I talk to her husband, and I told her I would be glad to talk to him, but he would have to come to me, and I would not go to him, so she got into a boo-hoo spell, and the if, and and, and why that he had been out of employment for five months before that, and that they were destitute, and now they were getting along better than they ever had gotten along in their lives, and the only thing that was bothering her was that she had to go to the hospital, and I more or (86) less tried to pacify her and told her not to worry about that, and to go ahead to the hospital, and I would see her through, it didn't make any difference what her husband did, because I wasn't doing it for that, and later on her husband did come to talk to me.

Q. Mr. Arnold, I will ask you whether or not many of your employees have come to you and made statements as to whether or not they wished to withdraw from the union? A. Quite a number of them, yes.

Q. Could you state approximately how many, just roughly? A. I would say maybe fifteen or twenty.

Q. What did you advise them? A. They came to me, it seemed more or less, on advice through others.

Q. They had already received advice from other persons? A. I had already talked to others, and some of them talked to friends, and some of them talked to their fathers, and different others.

Q. What did you tell them? A. Well, all I said was,

"Well, it is up to you, and you have to use your own judgment".

Q. Did any of them tell you as to why they joined the union, or whether there was any pressure brought on them to join this union? A. The majority of them (87) didn't know why.

Q. Did any of them tell you about the fact that they were told it was for the company's benefit, and if they didn't join the union, they would have to let them go?

Mr. BLUM: I object to that.

By Mr. LYNCH:

Q. Can you tell us some of the men that told you that? If you can't recall the name, just say so. A. I am sure Mr. England can do that.

Q. Did any of them ever tell you of the fact that they would only be required to pay $2 upon joining the union now, and they were told that if they didn't join now, it would cost them $15 later on? A. A large percentage of them.

Q. Do you personally know how many of them actually did join the union? A. No, I couldn't tell you.

Mr. LYNCH: I may say, if it may please the Board, that we have requested Mr. Schauffler, before the complaint was ever filed, to make a check with the men over there, as a Government representative, to see whether or not they really wanted to go into the union or not, and I so told Mr. Schauffler, and we had received advice from him, if these men didn't want to be in the union, and if he would check up and see if this was a (88) representative in the union or not, but this was not done.

Mr. BLUM: I object, and move that that be stricken out. It has no relevancy in connection with the case, and has no connection with what this witness stated.

Mr. CARMODY: Sustained. We can get that, perhaps, at another time.

Mr. LYNCH: All right.

By Mr. LYNCH:

Q. During your operations over in Virginia, do you recall a time or the incident when the Government clerks' salaries were cut? A. Yes.

Q. I will ask you whether or not you voluntarily reduced the fares to your passengers at this time.

Mr. BLUM: I object to that.

Mr. LYNCH: It has a bearing in this way: It shows the extent that this company was willing to go in order to please its patrons, and in other words, I am going to show that most of the patrons are Government employees, and that when they received a 15 per cent salary cut, I want to show what action was taken by the company, voluntarily on its part, in order to keep the good will of its patrons.

Mr. CARMODY: Of course, this is a labor case, and it has to do with an employer's relationships to the employees, and there is no question of wages here involved, (89) and no question of income, so far as I can see. It is totally a question of whether or not these men have a right to organize, and whether or not the employer, to discourage organization, actually discharged men when he found that they had organized. I think that is generally the question.

Mr. LYNCH: Now, my own thought is that possibly the public is always the third party interest, because after all they are the ones who are served, both by the employer and the employees, and as tending to show the fairness of the employer, not only with regard to the employees, but also the public, as to what action has been taken, from time to time.

Mr. CARMODY: I think if we wish to go into that fully, and put into the record the fact that practically all of the employees of the transportation systems of the United States that carry freight and passengers, are members of the union, recognized by the carriers, operating under Federal law similar to this law, I think that would tbe fair; I mean if we want to go into the whole question, but merely to put in a piece of it doesn't seem

to me to be of any advantage to anybody who has to review this record.

The courts ultimately review these records, and they are looking for pertinent and material evidence with respect to the case before the Board. I would say that the question of whether or not he increased or decreased fares is not before us.

(90) Mr. LYNCH: All right, sir. I think that is all.

RE-DIRECT EXAMINATION.

By Mr. BLUM:

Q. Mr. Arnold, did you have any other labor disputes in any other business besides this business? A. I have already answered that.

Mr. CARMODY: Yes.

Mr. LYNCH: Objection.

Mr. CARMODY: Sustained.

By Mr. BLUM:

Q. Did you tell Mr. Schauffler that you had a disastrous experience in a slaughter house with a union organization? A. No, sir.

Q. Did you ever have a disastrous experience? A. No, sir.

Mr. LYNCH: How long ago was that, Mr. Arnold, when you worked in a slaughter house? A. Yes. It wasn't a slaughter house.

By Mr. LYNCH:

Q. How many years ago was that? A. It was around about 1912 or 1913.

Q. Were you an employee for the Cudahy Company at that time? A. Yes, sir.

(91) Q. I submit that this irrelevant.

Mr. CARMODY: Sustained.

By Mr. BLUM:

Q. You are rather proud of the accident record of your company, are you not? A. Yes, sir, I am.

Q. And you have had a reduction in insurance as a result of it; isn't that true? A. Yes, sir.

Q. Wasn't that record made up by the men whom you just discharged? A. Some of them, I might say, but I might say this, when I got and heard of such things as I did, of employees going to leave buses run down hills, I still wanted to retain that record.

Q. Did you ever hear any of those threats from the employees themselves? A. No, I did not, but I heard them, and it is bad enough for it to get out to the public, and it is worse to get to the public than to me.

Q. You don't know how it got to the public, whether these men made the threats themselves? A. But with all of the things aworking—

Q. All of your precautions were taken as a part of
(92) conjecture on your part, as a result of some things other people told you? A. No, not by far. Things I saw with my own eyes.

Q. What did you see with your own eyes? A. I have already related that to you.

Q. I have understood that you talked about the cleanliness of the buses, and how would that contribute to more accidents, if the buses were unclean? A. That would not have any reference to the accidents, but I think that we have reports here to be substantiated, and Mr. England can tell us that.

Q. Now, when you say that Mrs. Harman came to you— A Hartman—

Q. Hartman? A. Yes, sir.

Q. And subsequently her husband came to you, and what was the conversation between her husband and you, relative to a labor union? A. Relative to the labor union, to be frank with you, I said he came to me, but I don't know whether he reported to me or to Mr. England, but anyhow, I know that he said that he wanted to withdraw from the union.

Q. He made that statement to you or Mr. England? A. I would say to someone in the office.

Q. Is he still in your employ? A. There is only
(93) three in the office, but I don't think that Hartman made that statement to me.

Q. Is he still in your employ? A. Yes, sir.

Q. Do you know whether or not he is still a member of the union? A. I couldn't say.

Q. When did Mrs. Harman come to you, just about

what time in the year was it? A. I don't remember that specifically.

Q. Was it during the year 1936 or 1935? A. It was during 1936.

Q. Was it in January, or February, or when? A. It was, I would say, in around the latter part of February or the first part of March.

Q. The latter part of February or the first part of March? A. That is right.

Q. These other people relative to this, that came to you, relative to withdrawing from the union, when did they come? A. I don't think I made such a statement, that they came to me.

Q. That was the imppression I got. A. I said the (94) employees. They got the information from their relatives, and check your record there.

Q. You mean your present employees got information from relatives of these union men that they wanted to withdraw from the union? A. I said that some of the employees had talked it over with their fathers, or their wives.

Q. Which employees do you mean, those now employed or some discharged? A. Some of them talked it over, before, it is my understanding, before they ever signed up, and some of them talked it over after they signed up.

Q. When did it come to your attention first that they had talked to their relatives, relative to this? A. Well, I will tell you. It has come to me on two or three different occasions, and it never comes in bunches.

Q. When was the first occasion? A. I am right bad at dates. It happened some time between, I would say, the latter part of February, and about the 10th of March.

Q. Now, about March 3d or 4th, did you receive a letter from the union, asking you to discuss a proposed working agreement with them? A. I can't tell you the dates.

Q. If I show you a copy of a letter, would you recognize it as a letter that you received?

(95) Mr. LYNCH: Do you have the slip from the Post Office, where it was signed, and the date it was received?

Mr. BLUM: This wasn't registered, it was sent by the union.

Mr. LYNCH: It was registered.

Mr. BLUM: All right; I will get the receipt.

Mr. LYNCH: Mr. Clark, do you have that receipt?

The WITNESS: I received such a letter, but I couldn't tell you the date it was received on. If it was registered, the receipt will show that.

By Mr. BLUM:

Q. Was it following this letter that the men were discharged? A. I would have to more or less find out the date of that.

Q. The letter is dated March 3rd.

Mr. LYNCH: Let us get that receipt.

Mr. BLUM: The president of the union is still working with the company.

Mr. CARMODY: Where was it mailed from and where was it mailed to?

Mr. BLUM: I will put that on at the proper time.

The WITNESS: Mr. England may have some information on that, and I don't know when it was received.

Mr. BLUM: I don't want that in evidence now.

By Mr. BLUM:

(96) Q. When were the first men discharged? A. To be frank with you, I can't tell you that date.

Q. Mr. England can tell me that? A. Yes.

By Mr. CARMODY:

Q. I want to ask one or two questions: Where is this garage? A. This garage is on the Wilson Boulevard.

Q. In the District of Columbia? A. In Clarendon, Virginia.

Q. Did I understand that an inspector from the Dis-

trict of Columbia went over there to inspect brakes? A. That is correct, sir.

Q. Why did he go over to Virginia to inspect brakes? A. For the simple reason that we operate in the District of Columbia, and that is the customary condition.

Q. Is that so, for an inspector from—was he from the Police Department? A. Yes, sir, from the Traffic Department.

Q. From the Traffic Department of the District of Columbia Police, and he went to Virginia, and went into a garage, and not only examined brakes, but had conversation with you with respect to whether or not people were tampering with them? A. That is correct, sir.

(97) I might say this: That the Public Utility Commission of Washington, and the Traffic Bureau frequently test our brakes, and they also are tested by the State of Virginia.

Q. Do the officers from the State of Virginia come over into the District and test brakes? A. No, sir, not to my knowledge.

By Mr. BLUM:

Q. Didn't your daughter-in-law make the request that those brakes be examined? A. I couldn't say that. Mr. Schauffler brought that up the other day, and if she did, she did that in line of duty, and I can't say.

Q. Does she have any connection with the company? A. With the company—with what company?

Q. With your Washington bus company. A. I was getting ready to tell you the connection. She is the wife of my son, Joseph Arnold, and she is an interpreter, stenographer, trial-board reporter, and connected with the Police Department, and private secretary to Inspector Kelly, and just how, if she reported that, I don't know; I haven't even asked her since, and I don't know. Maybe Mr. Storey would be able to enlighten you on that.

Mr. BLUM: I think that is all, from our viewpoint.

By Mr. CARMODY:

(98) Q. Do your buses carry mail? A. Yes, sir, we carry mail to Clarendon. That is the only point that we carry mail to.

Q. From where? A. From Clarendon, Virginia, in the morning, and sometimes from the post office.

Q. To where? A. We carry it in the morning, from Clarendon post office, Virginia, to McLean, Virginia.

Q. Do you carry it at night? A. Then we carry it from the District post office in the evening.

Q. To McLean? A. Yes.

Q. *Do* the buses do carry mail? A. Yes.

Q. Do you carry newspapers? A. Yes.

Q. From where to where? A. Well, we carry newspapers from 619 12th Street to different places on the Lynchburg Road, into Virginia.

Q. Into Virginia? A. Into Virginia, yes.

Q. Do you have other sources of revenue than pas-
(99) sengers and mail and newspapers? Do you carry any express? A. Very little. I might say that that source of revenue is very small.

Q. Yes, it is all very small? A. Yes.

Q. But you do carry some express? A. Yes.

Q. Now, a word about these delays in February: Was there any relation between this very severe winter that we had in Washington, and throughout the United States, and these delays? A. I would say yes, that some of them you could attribute to that, but you couldn't attribute it in the later part, and it was pretty good weather, and the first part of March we had remarkable weather for March, and there wasn't any reason for it at that time, and they were more numerous at that time than they were in the bad weather of February.

Q. I see. I use buses myself, not yours, but these other buses, and I have been complaining a great deal about delays, and they told me that it was the severe weather, and all of the summer-drivers put their cars up, and got on the buses, and therefore those of us that use buses all of the time had to wait for these summer-drivers to have their special service. A. That happens, and
(100) those are the ones that we get most complaints from.

By Mr. BLUM:

Q. There is one question that I would like to ask you: Does your company have a certificate of convenience and necessity? A. All certificates are issued on those grounds.

Q. Isn't that a new certificate, that has to be granted to interstate buses, under your Motor Vehicle Code? A. Public necessity and convenience?

Q. Yes. A. I don't know of a Commission that doesn't issue a certificate on that ground.

Mr. CARMODY: Mr. Reyman wants to ask a question. I thought you knew one another, you lawyers. He is an attorney for the union.

Will you ask that question again?

Mr. BLUM: Has the Washington, Virginia and Maryland Coach Company made application for a certificate of convenience and necessity, from the Interstate Commerce Commission, under the Motor Vehicle Carrier Act of 1936?

The WITNESS: I just answered that. Yes. We have filed all necessary papers in the matter.

Mr. BLUM: I think that is all.

By Mr. CARMODY:

Q. Just one more question: Have you read the (101) National Labor Relations Act? A. I have recently, yes.

Q. Do you know that it says anything about the right of employees to organize? A. I do.

Q. I realize that your Counsel has objected to the jurisdiction of the Board, but I just ask you whether you have read it, and those provisions. A. I am not as familiar on the law points as my Counsel.

Q. Are you a reader of Bus Transportation? A. To tell you the truth, my time is so occupied, that I am not able to find the time, but Mr. Wilsey, and Mr. England, I think that they study it.

Q. It keeps you pretty busy operating buses. A. Not only buses.

I want to ask a question on cleanliness. Who keeps the buses clean? Who is responsible to keep the bus clean? A. We have regular men in the garage, four day cleaners, and we have regular men, in the night.

Q. And the driver turns the bus over to the garage and makes his report to the office, and then the cleaners

clean out the bus and sweep it and wash windows? A. That goes through a regular process, such as oilers and greasers.

(102) Q. Then the complaint was not against these drivers but against the men in the garage, whose duty it was to clean the bus? A. To be frank with you, we had complaints from the drivers in regard to the cleanliness?

Q. The drivers complained that it wasn't properly cleaned? A. Yes, sir, and things of that kind.

Q. Thank you very much.

(Witness excused.)

Mr. CARMODY: We will recess for ten minutes.

(Whereupon a short recess was taken, at the conclusion of which the following occurred:)

Mr. HUGHES: We have those books here.

Mr. BLUM: I would like to have Mr. England produce those when we have him on the stand.

I would like to call Mr. Storer, who examined the brakes.

Whereupon JOHN W. STORER was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your name? A. John W. Storer.

(103) Q. What is your occupation? A. Inspector.

Q. Of what? A. Automobiles, and mechanical inspector for the District.

Q. Employed by whom? A. Bureau of Vehicles and Traffic.

Q. Of the District of Columbia? A. Yes, sir.

Q. Did you have occasion to examine recently any of the brakes of the buses belonging to the Washington, Virginia and Maryland Coach Company? How did you happen to go out to the garages? A. I had a call stating that Mrs. Joe Arnold was in his office and wanted some brakes tested, and Mr. Auger asked me if I would go

and test them, and I said, "we would be glad to, that is our business".

Shortly after Mr. Walker brought Mrs. Arnold down to my office, and explained the situation, and I told her it was up to her whether they were inspected or not but to get in touch with Mr. England or Mr. Arnold first, and she did, and called Walnut 8882, and I talked to Mr. Arnold.

Q. Which Mr. Arnold? A. Her husband, sir—Joe.

Mr. LYNCH: Mr. Arnold, Jr.?

The WITNESS: And Mr. England.

By Mr. BLUM:

(104) Q. In your presence? A. Yes. After she was through talking to Mr. England Mr. England spoke to me over the phone.

Q. What was that conversation? A. He said it wasn't necessary, that the brakes were O. K., and I told him I had no doubt about that, but a request came from the hack inspector's office, and the work had to be done. It was up to him, and he said, "All right, I will call you back and let you know".

Approximately—would you have to have the actual time or the approximate—

The EXAMINER: Approximate.

By Mr. BLUM:

Q. What is the date? A. March 5, 1936.

Q. Now go ahead. A. Approximately 12:10, Mr. England called me back and said, "I think your advice is right. Can you come over and inspect them here?" and I said, "If you furnish transportation I will be glad to", and Mr. Joe Arnold came over and got me and I went over there and checked thirty-four or thirty-six buses, I think everything was in.

Mr. CARMODY: What was that last statement?

The WITNESS: That was all of the buses that were in.

(105) Mr. CARMODY: They were the only buses there?

The WITNESS: Yes.

Mr. CARMODY: I see.

By Mr. BLUM:

Q. What did you find after examining these buses? A. That all foot brakes were in good condition.

Q. Did you find any evidence of tampering? A. Two hand brakes had been pulled over the pit, repeatedly, and I was notified two or three times by some person that I did not know, that there was tampering that went on. I saw this party walk away from Bus No. 107.

Mr. CARMODY: The party that told you it was tampering? A. That was an entirelydifferent party; and I went in the office, and told Mr. Arnold that if they were going to tamper with these brakes, there wasn't any use of my inspecting them, and I went out, and a fellow named Fritz went out and re-tested that brake, but the hand brake did not read up. That was the second test, and the boy pulled it over the pit, and I went down and looked it over, all crevices, and everything, and all bolts were in good condition and reported to Mr. England that there wasn't any tampering but that the hand brake was unsatisfactory.

Mr. CARMODY: Because of adjustment or a mechanical difficulty?

The WITNESS: That was easily adjusted, and it was (106) adjusted before I left there. He pulled it over the pit and put a man right to it, and I inspected more of the buses until I finished up, and I went inside and waited a few minutes to catch these on the run, and the time was then 4:30, when I left.

Mr. CARMODY: What time did you get there?

The WITNESS: Approximately around one o'clock, and it is only a twenty-minute run.

By Mr. BLUM:

Q. You say this Bus 107, you saw a man walk away from it. Had you examined it prior to that time? A. I had.

Q. Was it in good condition? A. It was.

Q. When the man went away, did you examine the bus again? A. I did.

Q. And were the brakes all right except for that hand brake? A. Just the hand brake.

Q. And did you find any evidence on any of the buses of any tampering? A. No.

Mr. BLUM: That is all.

The WITNESS: Yes.

CROSS EXAMINATION.

(107) By Mr. LYNCH:

Q. Mr. Storer, the Bus 107 was all right when you first examined it? A. Yes, sir.

Q. And in satisfactory condition? A. Yes.

Q. And then when you saw this person leave it you re-examined it, and it was not in good condition? A. The hand brake did not come up to expectations.

Q. Could that person have tampered with it? A. I examined it, and there was no evidence of tampering.

Q. What do you mean by "taping"? A. I mean "tampering".

Q. How do you explain the fact that it was all right just a short time before? A. Well, the chances are that it—the bus could have been greased, or there may have been a little grease on the emergency brake, which is just back of the transmission, and due to the run that it had before, it is possible that the grease had gotten on there.

Q. When this person left Bus 107, what did this person say? A. He gave a signal when I hollered. He put his hand up.

(108) Q. To his nose at you? A. He might have been saying "goodbye".

Q. He might have been. Was it a vulgar gesture that he made to you? A. I didn't pay much attention to it that way, and I saw him put his hand to his face, and that was the report I gave to Mr. England.

Q. How was the man dressed that went away? A. He had overalls on, according to my opinion, sir.

Q. Mr. Storer, you frequently examine the buses

of this company and other companies? A. I do, and check them all.

Q. You examined the brakes of these buses of this company for several years? A. Since 1929, when the regulations went into effect, sir.

Q. And you go to their shop and do that? A. Yes, sir.

If it please the Chairman, I would like to explain the reason why we go there. Our test station is down at 485 C Street, northwest. The doors, we only have an entrance where you have to pull in and back out, and the situation is becoming more difficult now since that loop has been put around on 6th and 7th, on C, running into the Avenue.

(109) In order to keep down the traffic and expedite things, where there is a fleet of trucks, we go and inspect them, and not only Arnold Operating Company, but the Washington, Virginia Coach Company out in Lacy, Va., and Washington Railway, and in fact we have gone to Baltimore, to accommodate the Greyhound, inspecting buses.

Mr. CARMODY: That is the one that operates through the District?

The WITNESS: Yes. We inspect them, in order to get D. C. tags, and they can not get a D. C. plate until they are inspected by one of the authorized persons.

By Mr. LYNCH:

Q. Did you say that two of these buses were put over the pit and the brakes adjusted while you were there? A. Yes, sir.

Q. Was that because the brakes were not up to a satisfactory rate of efficiency? A. Yes, sir.

Q. That is all.

By Mr. HUGHES:

Q. You spoke of tampering a minute ago. How do they tamper with brakes? A. Why, there are several ways to tamper with a brake.

Q. Is it easy or hard, or how long does it take? A. It is very simple.

(110) Q. Just give us a brief description of how that

is done. Have these buses air brakes? A. The majority have them.

Q. How would you tamper with one, if you wanted to release it deliberately? A. He doesn't have to do anything more than disconnect the line on the dash, or raise the hood and damage the cylinder.

Q. Any ordinary man could do that? A. Yes.

Mr. CARMODY: Did you find any of that on these buses?

The WITNESS: No.

By Mr. HUGHES:

Q. What is the effect of tampering with one brake? What effect would that have on the bus? A. They couldn't stop. They have an air brake, and a hand brake, and some have four-wheel brakes, and some have a two-wheel brake, but the hand brake is mostly a short brake, which is only a parking brake, and would not be capable of stopping the bus.

Q. If the foot brake is tampered and loose, it is in a dangerous condition? A. Provided it is an air brake.

Q. I assume they are four-wheel brakes? A. There are three different makes, a hydraulic, a straight me-
(111) chanical, or an air brake. If they tampered with the diaphragm on that, it would be dangerous.

Q. How long would it take to tamper with these brakes, in the case of these buses, of these three or four different brakes? A. You can take a pair of snips and cut your airline, practically in a minute.

Q. Is there any way to tamper with a brake such that it could not be discovered or not be likely to be discovered?

Mr. CARMODY: I think that is a good question. I can't see how the bus can get out of the garage without testing the brakes. If that is the way this bus system is run, a driver can take a bus out of a garage, and not know that his brakes are not right, and there is something wrong with the organization.

Go ahead.

Mr. HUGHES: I was wondering about that myself.

Mr. CARMODY: How can he get out on the road without knowing that it is wrong?

The WITNESS: If a driver takes that out, without 90 pounds of air, he is on his own hook.

By Mr. HUGHES:

Q. Is there any way that brakes could be tampered with such that it would not be discovered, as the bus goes out, and it might turn up later on in the run? A. (112) If they are tampered with on the air line, the gauge would not go up.

Q. The driver would know it immediately? A. Yes, regardless of who it was.

Mr. CARMODY: What are you trying to prove?

Mr. HUGHES: All I was thinking of was this, Mr. Examiner. Of course, you have got to look at this from the standpoint of Mr. Arnold. He was the president of the company, and the other officers of the company. This business of tampering is a very serious thing to them, and a very serious thing.

Mr. CARMODY: If you have any evidence here that there was tampering; or that on the road, a bus on the road was discovered to have been tampered with, it ought to be brought forward, but the supposition that something else might happen is not very clear evidence.

Mr. HUGHES: But it isn't entirely what could happen, but it is what reason Mr. Arnold had to believe that something might happen. In other words, it might have been that he was unduly disturbed, or that there wasn't a proper basis for his belief that buses might be tampered with, but if in a *bona fide* way, he acted on that belief, I would assume he was entitled to it.

Mr. CARMODY: He didn't know anything about this until after this man went out to the garage, his son's (113) wife, who is connected with the Police Department, made a report, and asked to have a man go out and examine brakes. Mr. Arnold, as I understand it, from his testimony, had no part in that, and said he didn't know it until after it had been done.

Mr. HUGHES: I think that is true.

I would like to ask a final question:

By Mr. HUGHES:

Q. It is possible, is it not, to tamper with brakes in such a way that the tampering might not be discovered immediately, is there not? A. There is a way that you can put a slow leak in there, and anything with air is pretty hard to do it, on account of the air gauge not keeping a register of 110, but yet, there is such a way of putting such an exceptionally slow leak in there that it gradually goes down.

Q. And I suppose there are other mechanical ways of tampering with it by removing nuts and bolts? A. Oh, yes.

Mr. HUGHES: That is all.

Mr. BLUM: None of that was ever done in any of these buses?

The WITNESS: No.

Mr. BLUM: That is all.

(Witness Excused.)

Mr. BLUM: I would like to call Mr. England.

(114) Whereupon HAMMOND H. ENGLAND was called as a witness on behalf of the Board, and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Now, Mr. England, are you employed by the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. In what capacity? A. As secretary and treasurer, and assistant to Mr. Arnold.

Q. Assistant to which Mr. Arnold? A. Mr. Leon Arnold.

Q. Now, I asked Mr. Arnold before, and he said that

you could answer certain questions as to the number of passengers carried in 1926.

Mr. LYNCH: May I ask the relevancy of that, may it please the Court?

Mr. CARMODY: I would like to know myself.

Mr. BLUM: I was attempting to show the growth of this company from 1926. I am not going to go through all of the years, but just a few to show the growth of the company and the increase in the passengers during that period of time.

Mr. HUGHES: We will admit that.

(115) Mr. BLUM: I would like to have it in the record.

Mr. CARMODY: It won't hurt to have that, if you can do it in a very skeleton sort of way, and do it quickly.

By Mr. BLUM:

Q. Do you know how many passengers were carried in 1926? A. Our first operation, when we were first started over there ten years ago, we were hauling about 1,800 a day.

Q. That is when you first started? A. That is right.

Q. Now, did that increase from year to year? A. That has increased from year to year.

Q. Now, could you estimate approximately how many passengers you were carrying in 1929? A. I don't have that in my head, no, but we have records that show that.

Q. I ask you to bring the records showing what you did in 1935. Do you have that? A. We have a statement there, and I think that our auditor should explain that to you, because that is in a different form as to our general records. Those are sworn to, to the State Corporation Commission.

Q. The auditor gets them up at your direction? A. Correct; yes.

Q. And you would be able to tell us how many pas-
(116) sengers you carried in 1936? A. In that record, yes.

Q. Would you give us that figure? A. It is very complicated.

Mr. CARMODY: May I ask whether this record is gotten up for any official body, or just for your own information?

The WITNESS: For the State Corporation Commission of Virginia.

Mr. ARNOLD: That record is sworn to before being sent to the State Corporation Commission of Virginia, and that is a true copy.

Mr. HUGHES: We haven't any objection to your having the entire record, if it will save time, Your Honor.

The WITNESS: They would average 8,000 persons a day for 1935.

Mr. LYNCH: This does not show it, Mr. Blum.

The WITNESS: It does not show it in the form that you wished.

By Mr. BLUM:

Q. How many buses did you start off with ten years ago? A. Nine buses.

Q. Do you know the number of employees? A. Approximately twenty.

Q. How many buses did you have during 1935, what was the most that you had during that year? A. Forty-
(117) eight buses.

Q. And the highest number of employees? A. Approximately eighty.

Q. What is the average number of passengers that you carry per day, now, in 1936? A. That is a little under 8,000.

Q. About 7,900? A. Around that, yes.

Q. Was that true during January, February, and up to date in March? A. Yes, sir.

Q. How many buses do you operate—did you operate during these months? A. We have forty-eight.

Q. And how many employees? A. Approximately eighty.

Q. Now, how many of these forty-eight buses are actually in operation? A. How many in actual operation?

Q. Yes. A. On our schedule, forty-two, forty-one or forty-two.

Q. Now, when did you notice this decrease, from 8,000 per day, in 1935, to 7,900 a day, in 1936? A. Well, about the middle of January.

(118) Q. Now, during the month of January, approximately how many passengers did you carry a day? A. During the month of January?

Q. Yes. A. The average was around 7,800.

Q. 7,800? A. Yes, about 7,800.

Q. During February, what was the average per day?

Mr. LYNCH: May I inquire as to the relevancy of these, as to the number of passengers carried from month to month, as to year to year, have to do with the question at issue here?

Mr. CARMODY: What is that?

Mr. BLUM: The purpose of this, if you please, is that one of the features of the Act under which we are operating, is that we have jurisdiction when there is an interference with interstate commerce, and now if there has been a decrease in revenue, and if there has been a decrease in passengers, that all goes to show whether there has been an interference with interstate commerce, and I think it is relevant for that purpose.

Mr. CARMODY: It may be admitted.

Mr. HUGHES: I was going to say, Your Honor, that certainly it has been shown that this company operates in interstate commerce, and I don't see why it is neces-
(119) sary to prove any more that it is in interstate commerce than it already is. It seems to me that the jurisdiction of the Board in that respect is plain.

Mr. BLUM: But in addition to the jurisdiction of interstate commerce, there must be an interference with commerce.

By Mr. BLUM:

Q. Now, during the month of February—

Mr. CARMODY: I am not sure that you are required to prove definitely interference with commerce, if I read the Act correctly, the threat of interference, or the intent to interfere, may be a factor in the situation.

Mr. BLUM: That is true.

Mr. CARMODY: So that if you wish to prove, and can prove, in the face of the cross examining of other counsel, that there is actual interference, you are permitted to do it, or permitted to attempt to do it. I don't know whether you can do it.

Mr. BLUM: That is what I am doing,—attempting.

Mr. LYNCH: Do you expect to show that there was a decrease because of the organization which was going on in January, and February, over there?

Mr. BLUM: I don't know.

Mr. LYNCH: I think that unless he has some evidence of it, he shouldn't be permitted to put it in.

(120) Mr. HUGHES: The charge was that these men were fired in March, and I don't see what any decrease in January or February has got to do with that. That is the only charge we are supposed to answer.

Mr. CARMODY: Again reverting to Mr. Arnold's testimony, he began to be disturbed last fall, in September and October, by this business, and he may or may not have worked persistently at straightening the matter out, and in any event he reached, I don't know when he reached his conclusion, but he took action of a definite sort in March of this year.

Now, what he was doing in the meantime, and what these other men were doing in the meantime, remains to be brought out in testimony.

Mr. BLUM: May I have the question answered?

Mr. CARMODY: Go ahead.

By Mr. BLUM:

Q. What was the average number of passengers carried during the month of February? A. Approximately the same.

Q. 7,800.

Mr. CARMODY: There may be a great many other elements in this question of increased and decreased traffic, particularly when the variation is so little as that. The dismissal of a whole department such as N. (121) R. A. may have a bearing on the number of passengers carried on these buses, I don't know, or the introduction into Government service of a totally new department, bringing in four or five thousand people, and the Social Security group will grow, so we are told, and that may increase traffic, some of which goes to these buses, so you may be required to go into a much wider range of testimony.

You see, I am not a lawyer, and I am disturbed by this business of trying to build a whole case out of evidence, because it isn't to me very scientific, and we know, those of us who have done management engineering, that we can determine all the evidence that is necessary in a case, not from witnesses, but from factual material that we examine into in a research sort of way, and I know that we have got to go through the process of wasting a lot of time because we are tied in with court procedure, so we go through that process, and I endure it, as an Examiner, but I know that there are many other elements that will enter into this, and I think we all know that, so you may have a lot of tall proving to do, and these men may have some questions to ask.

Mr. LYNCH: Maybe that some housewife over in Virginia didn't care to come to the motion picture theatre for a while.

By Mr. BLUM:

(122) Q. What is the average number of passengers carried to date, in March? A. I haven't checked to date.

Q. Do you get detailed daily reports on that? A. Yes, but I don't have the average. I haven't carried them. We have that record, and we can furnish it to you.

(Whereupon there ensued discussion off the record.)

The WITNESS: That is passengers hauled from 1926 to the present date.

Mr. CARMODY: What years do you want?

Mr. BLUM: 1926, 1929, and 1935.

By Mr. BLUM:

Q. Now, Mr. England, when did you first learn that labor organization work was going on in your business? A. Thursday night of February 27th.

Q. How did that come to your attention? A. That came to my attention by certain drivers that came to me, certain men.

Q. Who are those drivers? A. The names of the drivers?

Q. Yes. A. Mr. C. M. Johnson.

Q. Who else? A. I immediately started to ask—

(123) Q. Who else? A. Nobody.

Q. You said several. A. Well, I asked them. I put that wrong. I asked others immediately, and they told me "yes."

Q. You asked others? A. Yes.

Q. What did Mr. Johnson tell you? A. That they were joining the union.

Q. He merely came up to you and said he was joining a union? A. Yes.

Q. Was that apropos of any remark that you put to him? A. Was that after?

Q. I mean, did you ask him anything before he volunteered that information? A. I did not.

Q. Was there any other conversation between you and Mr. Johnson that evening in reference to the union? A. No, sir. I immediately left him and went to a wrestling match.

Q. Did you say anything about joining the union? A. No, I didn't.

Q. Well, were you alarmed at the fact that he had

(124) joined the union? Not particularly then, because I didn't know, and had only had it from one person.

Q. Then what caused you to go on to the other

drivers and ask them if they had joined the union? A. To find out if they had.

Q. When did you do that? A. The next day. The next morning, on Friday, the 28th.

Q. Which drivers did you ask? A. Which ones did I ask?

Q. What are their names? A. I asked Mr. Grabel, Mr. Stockley, Mr. T. T. Rudacille.

Q. Who else? A. Mr. Crissman. How many is that?

Q. Four. A. I think that there were six or seven of them.

Q. You say that the next day you asked these drivers if they had joined the union, that is what I am asking you about, is that true? A. Yes.

Q. Did you ask them all at the same time, or ask them individually? A. Individually, because I asked them at our terminal where they come in one at a time,
(125) and only had three or four minutes there.

Q. How many of these four that you mentioned are still in the employ of the company? A. All except one.

Q. All except one? A. Yes.

Q. Who is that one? A. Mr. Crissman.

Q. Why did you ask these drivers the next day if they were members of the union? A. I was curious to know.

Q. Well, the night before, when you were told by the first driver, you didn't have any curiosity at all and went to the wrestling match? A. Oh, yes, I did, I had plenty of curiosity. I went to the wrestling match.

Q. Why didn't you question him further the night before? A. Why didn't I?

Q. Yes, the first driver. A. He just told me, and I thanked him for the information, and I had a man sitting at the curb in an automobile that I was taking to the wrestling match, and it was then time, and it was then eight o'clock, and we had to go up to the wrestling match, and it starts at eighty-thirty, and we didn't have very
(126) much time. I invited a guest to go with me, and I won't say that either, but a man that got some tickets that really invited me, but I was taking him along with me.

Q. It was just your curiosity the next day that prompted you to ask these men? A. I had curiosity that night, but I hadn't come in contact with any others to ask them.

Q. I see. And when these men told you that they were members of the union did you say anything to them? A. No, no.

Q. Did you ever say anything to anybody in your employ about being a member of the union? A. To a certain extent, yes.

Q. What did you say and to whom? A. I never advised any of them.

Q. What did you tell them? A. I simply—I let them tell me. I wanted to know what they were doing, what their working conditions and so forth were.

Q. Had they been complaining about working conditions? A. No.

Q. How did you know them? A. I asked them to (127) tell me, and I didn't say their working conditions that they had at present, but they were telling me that the union was going to get them this, and that, and certain things, and I asked them to explain it to me.

Q. And what did you tell them after they explained it to you? A. I didn't tell them anything.

Q. You mean you sat there and listened all of the time? A. Yes.

Q. And never said anything to them at all? A. Sure, I asked them questions, back and forth.

Q. What kind of questions did you ask them, that is what I want to know. A. I asked them if they thought that they would like it, to be in the union.

Q. And what else? A. They had to be informed of all of their working conditions—or had they been informed of all of their working conditions. I gathered that from different things they had told me as to—some of them said—"Why, I got in because it only cost me $2 now, and it would cost me $15 tomorrow.

Q. Yes, and what else did you tell them or ask them? (128) A. Nothing much.

Q. That was the gist of your conversation with all of the men that you spoke to? A. I would say yes.

Q. And how many men did you speak to in connection with the union? A. On what day?

Q. All during the time after you found out that there was a union, until the time of the discharges. A. That is, I suppose I talked to twenty-five or thirty of them.

Q. Twenty-five or thirty, and each time you just

merely asked them those questions that you just outlined? A. Yes.

A. At no time did you vary your routine? A. That is possible.

Q. Well, can you recall any other question that you might have asked? A. No.

Q. Who did the actual firing of these men? A. Which men?

Q. The men that were fired, all of them. A. I fired the drivers.

Q. Which drivers did you fire? A. Mr. H. M. Hall, Mr. West, Magaha.

(129) Q. And what other ones? A. Mr. Stanley Smith.

Q. Were these all drivers? A. Yes. And Mr. Santon. Is that six.

Q. That is five. A. And Mr. Crissman.

Q. That is six. Now, how long had Mr. Hall been in your employ? A. Oh, a good many years. I don't know just how long, but I have those records.

Q. What was his record as a driver? A. Some good and some very bad.

Q. What do you mean by "some good and some very bad"? A. I might like to show you the records of Mr. Hall, and show you why they were bad.

Q. Can you tell us, bad in what respect? Did he have a lot of accidents? A. He had some.

Q. I asked you, did he have a lot? A. I wouldn't say "no."

Mr. HUGHES: What can be better than the records? I think that we should have those records. They are right here.

Mr. CARMODY: Are these the individual cards from which the record was taken?

(130) Mr. BLUM: Does this show how long he was employed?

The WITNESS: Back in December, the latter part of November, and the first part of December, we had a private check made on our buses, and that man rides the buses, and gives us a report, and on the strength of that report, he made recommendations as to certain drivers,

and there was a party that was let out immediately, for certain reasons, and we have the records here to show.

By Mr. BLUM:

Q. Whose records are they? A. This record is made by the secret man that *road* his buses.

Q. Made by the secret man? A. Yes.

Q. Wasn't he available? A. He is available.

Q. Yes. A. Not today, but he can be brought here. He is now wroking on a—I would prefer to have him testify.

Mr. LYNCH: I submit, may it please the Board, that if an employer employs a person to make records for him and this information is brought to him, as to a driver's record, that they may act upon it.

Mr. BLUM: This is a case where there isn't an employee situation, but it was a man employed by private persons.

(131) Mr. LYNCH: He picks an employee for that purpose, to make an investigation, and it would be the same thing as if the Department of Justice gets an investigator to work on a case, and certain information is brought to, let us say, to the Secretary of Commerce, of the Department of Justice, and it may not be one of his own men.

Mr. BLUM: The reason that I am objecting is that I don't want Mr. England to produce these records—it doesn't give me the proper chance of cross examining the man as to the manner in which he made those records. Mr. England couldn't anwer the questions that I would ask him on cross examination, and since he is available, he is the only man that can testify to it, and I strenuously protest to Mr. England testifying.

The WITNESS: He is in New York State making a report for a bus company.

Mr. HUGHES: It seems to us that the question is whether the company had a right to fire these men, and if they made an investigation, and the man reported, they had a right to act on the report. These are not our witnesses; they are his witnesses.

Mr. BLOOM: I didn't ask for those records.

Mr. LYNCH: You asked why he was letting—

Mr. BLOOM: He is producing somebody else's record.

Mr. LYNCH: What is a company record except a (132) record that somebody makes for it.

Mr. CARMODY: There are different kinds of records, and there must be in the files of the company, a card covering this man's total service showing his merits and demerits for the whole period of his employment. Now, that is one kind of record. Unfortunately, frequently there is entered on such cards information about a man that is not true, because the man has not had a chance to face anybody before it was entered, but there, never the less, is that kind of record, and every transportation company has such a record, and then there is a record made by a detective, and it would be important to know whether or not when that detective was hired he had any instructions with respect to whether or not this company was concerned about its men going into an organization, and he would be the only person that could testify to that. These spotters—and they are called that—officially by the companies, are hired, and every transportation company has them, and everybody that works for a transportation company knows that there are such men, and that they are being checked, and sometimes by outsiders, and sometimes by a fellow employee, known as trouble headers, and those records, it seems to me, need to go back to the original source, so that we have here an opportunity to examine two kinds of records, the record that was kept of the man by the company for (133) its own information, over the period of his employment, and I don't know how long that was in the case of Hall.

How long was he employed, approximately?

The WITNESS: Four or five years.

Mr. CARMODY: That is a totally different record than a record made by a spotter, who has ridden with a man once or twice, or maybe four or five times. Both

records have significance, both of them, and as far as I am concerned, I would like to see both of them. I would also like to see the man that made them, and I would like to know his instructions.

What were they?

Was he to get something on a man; and was he to make a general survey of the transportation employees over the system, or was he to get something on these various men?

There is nothing about it, unless we know what his business is, and where he came from, whether he is an independent detective or works for a detective agency or specializes in spotting on buses, or what.

You state the man is available?

The WITNESS: Not right now. He is working for a company in New York. I just got a letter from a New York bus company, asking as to his references, and I assume that he is checking them now.

By Mr. CARMODY:

(134) Q. How long did he work for you? A. How long did he work for us?

Q. Yes. A. He checked us about ten days, and I have his whole report here, from the start to the finish, and it is all dated.

Q. When did you decide to hire somebody? A. This man has been checking us off and on for the last five or six years.

Q. Does he do it regularly, or does he do it intermittently? A. We send for him, yes, sir.

Q. And when did you send for him this time? A. I didn't send for him. He called me up, and he had just come back from a trip, and he called me up, and said he was in town, and would we need any checking to be done, and I said, "yes, I would like to have some done."

Q. When was that? A. That was about the middle of November. These records will show right here, in his handwriting.

Q. And he spent about ten days? A. Yes.

Q. How much do you pay him? A. $5 a day and expenses.

(135) Q. What are his expenses? A. Expenses that he paid his fare on the bus, and the number of trips, which we could easily check back, because he had to have

the time and the bus number at different times of the day, from where he rode. We knew this was that way, and he bought that on his expense, and we reimbursed him for that.

Q. Do you pay any other expenses than that? A. No, sir. Well, traveling expenses was on our bus, which was a fare. We did pay on one occasion, that we sent him to Winchester to spend a night in a hotel up there.

Q. For what purpose? A. For a checking, and we operate between here and Winchester, and he went up in the evening—on the evening man, and came back on the morning man, and we paid his hotel bill. That was one dollar.

Q. And he made a report? A. Yes.

Q. Did he ride very bus? A. He rode a big majority of them. I don't know that he caught every man. He may have ridden every bus and may not have caught every man, because they change off, certain trips he may have missed a few.

Q. Did he make any comment on your equipment, on the mechanical condition of your equipment? A. (136) Not in writing, no, sir.

Q. What did he say about it? A. Well, I think maybe he did comment on a couple of cases, as to it.

Q. Did he suggest that some was pretty old, and unfit, and you might get some new? A. It is written in his report.

Q. Did that come up at all in the report? A. He made some comments on the equipment in the report.

Q. Is that part of the arrangement you have with him, to report on the physical condition of your equipment? A. Report on the whole operation, yes.

Q. And on the men? A. On the men, yes.

Q. What they do? A. Yes, sir.

Q. What particularly do you look for when you ask him to check the man? What do you ask him to look for? A. To see if a man is collecting fares, to see that the passengers are paying, to see that they are getting in and paying their full fare, and not paying 10 cents in a 20 cent zone, or 5 cents in a 15 cent zone, and to see that they pay the full fare, and to see that the driver is not taking hand collections, and to see that he (137) is not talking to passengers while driving, which is very dangerous.

Q. The only time you have the buses checked for

that purpose is when a man like this comes and spends ten days, and that is two or three times a year? A. That is correct.

By Mr. BLUM:

Q. Mr. England, Mr. Magaha is one of your drivers, or was one of your drivers, wasn't he? A. Yes, sir.

Q. Now, did you ever have any conversations with him, a week prior to his discharge, relative to the union? A. A week prior to his discharge?

Q. Yes. A. No, sir.

Q. You did not? A. Not a week prior.

Q. Did you have any conversation with him several days prior to his discharge, relative to a union? A. I think we talked to him.

Q. What did you tell him at that time? A. What did I tell him?

Q. Yes, sir. A. I told him to use his own head.

Q. Apropos of what? Did he ask you something? A. Did he ask me something?

(138) Q. Yes. A. No. We were talking about the union, yes.

Q. What was the conversation about the union? A. I can't—or I don't remember Magaha particularly.

Q. Why did you tell him to use his own head, about what? A. I told them all to use their own heads.

Q. About what? A. In reference to going in the union.

Q. Did you ever tell Mr. Magaha, did you ever tell him that he would have to give up the union or else give up the job? A. I did not, sir.

Q. Did you ever tell that to any of your drivers? A. No, sir.

Q. Any of the mechanics? A. No, sir.

Mr. BLUM: I think that is all, Mr. England.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. Mr. England, did you ever discharge any of these drivers by virtue of the fact that they were members of a union? A. No, sir.

Q. Or that they were active in the union affairs?

(139) A. I did not.

Q. There was some question on direct examination about complaints. Have the drivers and mechanics always gotten along up to until fairly recently, well with the company, and the officials of the company? A. Just like one big family.

Q. There were never any complaints individually, or from any group of any unfair treatment? A. No, sir.

Q. Did you check over these records that you refer to having received from this investigator who made a report to you, did you take those up with Mr. Arnold? A. I did, yes.

Q. And had you during the several months prior to the first part of March, been breaking in what may be referred to as relief drivers? A. Ever since this report I refer to, we have been breaking in drivers and really ever since the 15th of December.

Q. How many relief drivers or new drivers that you were breaking in, did you take in, let us say, from around November or December, whatever month that was that you refer to? A. How many did we break in?

Q. Take on, to break in? A. Of course, we only get (140) about one out of every five.

Mr. BLUM: It seems to me that as a matter of procedure I have called Mr. Engand as my witness, and counsel has a perfect right to examine him, but he can't put on his defense through Mr. England, and take away the right of cross examination from me.

If Mr. Lynch wants to recall Mr. Engand later on to put this testimony on, he is certainly qualified to do it, but he can't ask this type of questions on cross examination.

Mr. CARMODY: That is right.

Mr. LYNCH: I submit it is relevant.

Mr. CARMODY: Are you calling him now as your own witness?

Mr. LYNCH: No, I am cross-examining. The relationship as to what Mr. Blum asked, whether or not he made certain statements to some of these people, and Mr. Blum also asked whether he made certain state-

ments to them, and what statements were made by the men in replying thereto.

Mr. CARMODY: They were men specifically named here.

Mr. LYNCH: And the question about to be asked the witness is to take up the individual men, and to determine why they were dismissed from the service, and to show that it was not by reason of any union activity. Certainly he has asked it both directly and indirectly, as (141) to whether they were dismissed for union activity, and I submit that if he has it here, it should be testified at this time what the records show, and what he acted upon at the time of the dismissals.

Mr. CARMODY: I thought that the discussion, or I thought that the original question went to the conversation with these spare drivers, who were brought in, in anticipation of some fluctuations of traffic.

Mr. LYNCH: He has already testified to that.

Mr. BLUM: I don't know what the prior question was, prior to my objection.

My objection was subsequent to the matter of the relief drivers.

Mr. LYNCH: I have a right to show on cross-examination that if they took on new drivers, to replace these men later dismissed, they can show whether they took them on, and why they took them on.

Mr. CARMODY: When was this report made to you?

The WITNESS: This report started to be made in the latter part of November, and then the first part of December, from the 28th—the dates show that approximately the 27th or 28th of November, to ten days beyond that.

Mr. CARMODY: Were these relief drivers brought in after you got this report, or before?

The WITNESS: After, sir.

(142) Mr. CARMODY: None of them before the report?

The WITNESS: Well, of course you can check back. We break in a man now and then, but not as many as we decided to hired at this time.

Mr. CARMODY: Are we ready to go into this whole question of the reason for the dismissal of the men? Isn't that what the hearing is about?

Mr. BLUM: At this point we are not, sir, because this man, Mr. England, is under cross examination, and he may be cross examined as to anything that I asked him but certainly he can't be cross-examined as to anything else, and if he has a matter of defense which Mr. Lynch is trying to bring out he can call him back later on.

Mr. HUGHES: Your Honor, I submit that Mr. Blum certainly asked this witness whether these men had been fired because of the fact that they were members of the union, and doesn't that open up the entire reason why they were fired? What better way can you get at the real question than to show that they were fired for other reasons? I submit that it seems to me to be so relevant that there is nothing to be said on the other side of it.

Mr. BLUM: What did other drivers or the breaking in drivers have to do with that?

Mr. HUGHES: It shows a reason for their later on having been separated from the service. It shows the (143) whole thing was entirely *bona fide*.

Mr. CARMODY: I am willing to hear it. The hearing is to determine why, and Mr. Blum did ask Mr. England why he fired him, and Mr. England is under oath, and let him answer why he did.

Mr. LYNCH: All right.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. The last question I will repeat, so we won't have to go back to read it:

Did these drivers, these relief drivers, that were taken on subsequent to the report which has just been referred to, which was made to you the last part of November, and the first part of December—is that correct? A. Yes. sir.

Q. And these relief drivers placed, and replaced rather, some of these persons separated from the service along the first part of March as drivers? A. Yes.

Q. I will ask you whether or not there were conferences between you and Mr. Arnold relative to the drivers before they were dismissed? A. Yes, sir.

Q. And were any of the drivers dismissed by reason of any union activities? A. No, sir.

(144) Q. These conferences, can you give us the approximate dates of them, or the time as near as you can? A. Ask me that question again.

Q. Can you give us any dates of any conferences that you had with Mr. Arnold relative to the separation from the service of the drivers? A. From the 15th of December on, we had many conferences, as to different ones. I had different reports, not only these written reports, but I had other complaints, that had been given to me from time to time, and these men were considered, to let them out of our service.

Q. I will ask you to name to the Board some of the elements that were considered by you with regard to the retaining or the dismissal of a driver? A. Well, if a man is not collecting his fares properly, or is making hand collections, talking, unnecessarily talking to passengers while driving a bus, smoking on a bus, and many things along those lines.

Q. Accidents? A. Yes, that has a very important part in this.

Q. Tardiness? A. Yes.

Q. I am referring to different things. A. Well, if a man is not showing up for his run, that is an import-

(145) ant thing.

Q. Why would that be important, Mr. England? A. If there is no driver to take the run out, the run does not go out, and it would be very embarrassing, and we would be called upon by the State Corporation Commission, and they would call us down for it.

Q. Now, on the various persons that were separated from the service, in the first part of March, did you have

the reports of their accidents, and other reports on them, that you have just referred to? A. I have, yes, sir.

Q. Will you produce those, sir.

Let us take Mr. Hall, please.

Mr. BLUM: I object to these reports, on the ground that they are not reports that he has made, and were reports given to him by somebody else.

Mr. LYNCH: I submit, Mr. Examiner, that it is certainly proper; now, let us assume for a moment that the Washington Rapid Transit Company puts in a special investigator, to check on their buses, and they come to the managing director of the company, and certainly he has a right to act on them. Nobody in the world can say with greater accuracy or positive accuracy that they are doing the right thing; human faculties don't work with extreme accuracy, and people make mistakes from time (146) to time, and he may have let a good man go, but sometimes you make mistakes, and oftentimes that happens. Maybe that he picked out a poor investigator, and he has been a man used for four or five or six years, and if a man acted upon that, and had belief or confidence in the man who made the report, he would be justified in taking into consideration that point.

Mr. BLUM: May I at this point say this: That these are reports dealing with the integrity, and I suppose the honesty, of some of these people employed, and they are attempting to put that in the record in such a manner that they would not be subject to an accounting, to *vindicae* the people attacked in these reports.

Now, the man qualified to give you what is in that report is the man that made it, and that man should be here, and be under oath, and with a right in my possession to cross-examine him as to the manner in which he made those reports, and the number of times when he appeared on these runs, and how he observed these things, in order to make these reports

It is true that Mr. England as a representative of the company acted upon them, and we are certainly willing to say that he received certain reports and acted on them, but not what those reports contain. It is not fair to the men and it is not fair to us.

Mr. LYNCH: We want to show that some of the (147) things that are in their were facts which he took into consideration. Now, we can't show why he, for instance, separated a man from the service until we can show what is in the report, at least.

Mr. HUGHES: We didn't start these proceedings. In fairness to the men—we can't help it, it is too bad.

Mr. CARMODY: It is common practice in the transportation system, wherever men are organized, and I suppose that is one reason why men are organized in self-protection, to have the man faced with the man that makes the charge, so that he may see him and see who he is.

Nobody knows who made these reports, at the moment; a man made them, who was hired to do detective work, and they may not be admitted unless the man comes here, swears that he made these reports, and submits himself to cross-examination.

What may be admitted here would be the total employment record of the man, that goes back to the beginning of his employment, with all of the entries on it, so that the man may face the card, and the record may be subject to cross-examination. These may be admitted if the man brings them in or comes in with them.

Mr. LYNCH: May we have an exception to the Board's ruling?

Mr. CARMODY: You may.

(148) By Mr. LYNCH:

Q. Mr. England, do you have any records or company records, separate and apart from the records made by the investigator, relative to these persons, or men? For instance, the number of times they were late, or accidents, and so forth? A. I have the accidents, and the misses.

Q. All right, will you produce those, sir?

Mr. CARMODY: May I ask whether the company has any special merit system which would show appreciation of especially good conduct or specially safe driving, such

as Greyhound has for itself with its gold star and silver star, and do you have anything of that kind?

The WITNESS: We do not.

Mr. CARMODY: What happens to a man with a perfect record? Where would that show?

The WITNESS: Seniority lists, of course, he gets the best run, and—

Mr. BLUM: I may refresh your recollection, that Mr. Arnold testified that the seniority men, and the men with the best records, get the daytime run, and the other men get the night-time run?

Mr. CARMODY: That was in the shop.

Mr. ARNOLD: The same thing applies to the men.

Mr. CARMODY: So that the seniority doesn't mean (149) length of service, but seniority means, what is it, clear record?

Mr. ARNOLD: It is more or less based on service, and the oldest men get the best runs.

Mr. CARMODY: And that is the way, but that isn't what I am asking about. We are bringing in here cards that show when men were late, and when men had accidents, and now, what would you bring in if a man had a perfect record? Would anything come in?

The WITNESS: His card would be clean, and we have no reason to keep any card.

Mr. CARMODY: May I see the card, and see in what form the card is kept?

The WITNESS: There is a man that had twelve accidents last year.

Mr. CARMODY: There is no other entry on the card. Is that the way the record is kept?

The WITNESS: That is all.

By Mr. CARMODY:

Q. It doesn't show anything about the accident. A. It shows the type of accident in his personal file.

Q. I am looking for a completer record, and some of these are reports of accidents for which he was not given demerits; is that true? A. Possibly so.

(150) Q. You can't tell from this card? A. No.

Q. It doesn't tell a thing, and it doesn't tell what it is for? A. He has an individual accident report.

Q. That is not admissible for anything.

Mr. LYNCH: I have seen them.

Mr. CARMODY: What do they mean?

Mr. LYNCH: It means that they have the record of this man having that many accidents.

Mr. CARMODY: Let us go back to the original entry.

By Mr. LYNCH:

Q. Do you have an original entry on that? A. We have the accident reports themselves, and that comes in.

Q. And was this card taken from those sheets? A. That is correct.

Q. And that accident record, is it listed especially for each driver, or just put on in rotation, one accident after another? A. Each man has a file there, and in his file of last year, there are 12 accident reports, and those reports have gone to the A. H. Baker Company, and they are accident reports.

Q. What is the Baker Company? A. He is the insurance company.

(151) Q. What you have to do is to bring down the file of each one of these men, and then we can go through the entire file and get his entire record.

Mr. CARMODY: That is correct.

Mr. LYNCH: In the event we are unable to get this man down from wherever he is, may I ask, for the pur-

pose of the record, Mr. Examiner, the names of the six men, or such of them as this man made reports on, without giving any information as to what the report was, so that if it does show it is adverse, will you tell the names, Mr. England, of the men that you had the report on from this special investigator?

The WITNESS: Six of the 96 that were let go?

Mr. LYNCH: Yes.

The WITNESS: H. M. Hall, Mr. Crissman, Mr. West.

By Mr. LYNCH:

Q. Anyone else? A. No, there were three that had been hired since that time.

Q. Were those reports adverse?

Mr. BLUM: I object to that.

Mr. CARMODY: Sustained.

Mr. LYNCH: Exception, please.

Mr. CARMODY: You may have an exception.

By Mr. HUGHES:

Q. Did you take those reports into consideration in (152) discharging the man? A. Yes, sir.

Q. Of course, we don't wish to waive our former objection, by asking those questions, but we would like to reserve our exception.

Mr. CARMODY: All right.

By Mr. LYNCH:

Q. Mr. England, did you talk to several of these drivers, and did several of them come to you and ask your opinion about whether they should go into the union or not? A. Yes, sir, they came to me.

Q. What did you tell them? A. I simply told them that they had better go ask somebody else, and use their own head.

Q. Have you many persons now working as drivers,

who so far as you know, are members of the union? A. I understand we have, yes, sir.

Q. Can you give us an idea as to how many there are who are paid up or filed applications for the union? A. Approximately thirty-five.

Mr. CARMODY: How would you know?

The WITNESS: Only by reason that they have said that they have joined.

Mr. CARMODY: Could you give the names of the thirty-five that have told you they have joined, and are still (153) members?

The WITNESS: Yes, I could give you the names of those thirty-five.

By Mr. CARMODY:

Q. Do you remember some of them? I would like to have the names of those who told him that they are joined and are still members of the union. He says that there are thirty-five of them. A. That is, as far as I know.

Q. As far as you know; you said that they told you. A. They told me.

Q. That is all. The rest is immaterial, but the fact that they told you that they are members and are now members is another thing. That is what you know. That is what they told you, and whether they are or not is immaterial. A. Do you want the names?

Q. Yes. A. Graeble, Stockley, Armantrout, Harris, Devers, Mr. Hancock—there are three Armantrouts.

Q. I am asking you only for those who told you that they had joined and are now members of the union, and still working for you. A. Well, might I say this: If they have come and told me that they joined, but they don't really—whether they are members or not—

(154) Q. If they told you that they joined. A. They told me that they joined, but they do not know whether their applications make them a member or not.

Q. I don't know. A. I don't know either, but that is what they told me.

Q. You have given us eight names. Now, there may be two or three more that you can remember, or if you don't we will pass on to the next.

Mr. HUGHES: Could we, for refreshing his recollection, give him a list of the employees, and then he would be able to pick them out.

Mr. CARMODY: I think that it would be worth while making this list reasonably complete.

The WITNESS: I will just run over these and give you the ones that I haven't given you so far.

Havenner, Walton, Clayborne, Snoots, Dinkle, Densmore, VanVice, Kaddel—that is John; and we have two, but that only means one; Tingstrum, Berry, Guy and Ray Sambles, Eckerd, Reynolds, Hiner, Smith—that is E. I. Smith; Miller, Hartman.

Mr. CARMODY: That is the same man whose wife went to Mr. Arnold.

The WITNESS: I think so.

Mr. CARMODY: That is close enough.

The WITNESS: Those are the shopmen.

(155) Mr. CARMODY: Did these men come to you separately to tell you this, or did you go to them individually, or did you see them in groups?

There is quite a lot of men to talk about this subject.

The WITNESS: Why, some of them came in at different times, came in to talk about it.

By Mr. CARMODY:

Q. Did they come in groups at all? Two or three or four of them? A. Yes, some of them did.

Q. Did they come in to ask your advice, or to ask—or what did they ask; and tell me what someone of them asked when they came in to see you. Do you remember anybody at all? A. Yes, Mr. Stockley said that he understood that it would be a big help to Mr. Arnold, and wanted to know if it would be or not, and I told him that I didn't know. But he was led to believe that it would be.

Q. Then what happened? Did he go right out when

you told him that you didn't know? A. They went out, and I don't know where he went after he left.

Q. I don't mean that. I want to know what happened while he was in there; did he walk in, and ask you, or tell you that he understood that this union would be a great help to Mr. Arnold, and you said you didn't (156) know whether it would be or not; is that all that transpired? A. I might say as I mentioned here before, that Mr. Stockley is the one that I approached at our terminal, and *and* that is the first word that he said, and he said that he joined because it would help Mr. Arnold.

Mr. CARMODY: Did any of them say that they had signed it because they thought it would help themselves?

The WITNESS: They was all led to believe that it would help themselves, yes, sir.

Mr. CARMODY: Now these men are all still there?

The WITNESS: Yes, sir.

Mr. CARMODY: As far as you know, they still belong to the union?

The WITNESS: As far as I know, yes.

Mr. CARMODY: All right.

Mr. LYNCH: Have some of them told you that they wish to withdraw from the union?

The WITNESS: They have, yes.

Mr. CARMODY: What could you do about their withdrawal from the union?

The WITNESS: They asked me, a lot of them came and asked me how they could get out of it.

Mr. LYNCH: What did you tell them to do?

The WITNESS: I told them that I didn't know. I

could not advise them. I have never been a member of a union.

(157) Mr. HUGHES: How many of them were there, have you any idea?

The WITNESS: Approximately all of them.

Mr. HUGHES: All of how many?

The WITNESS: All of them, around thirty-five men.

Mr. HUGHES: Those same thirty-five?

The WITNESS: Yes.

Mr. LYNCH: Mr. England, I don't know whether I asked this question, but during the latter part of February, and in the first part of March, were there an exceptionally large number of service calls or breakdowns as you term them?

The WITNESS: There was.

Mr. CARMODY: Would you have a record showing on what dates they were, and how many there were each day?

The WITNESS: Yes, sir.

Mr. CARMODY: I think that it might be well to have it in here. Let us see when they started, and how many there were each day.

The WITNESS: We have a few of them missing, and I don't know why, between times, which shouldn't be.

Mr. CARMODY: How can you tell when one is missing? Have you got another record?

The WITNESS: They certainly didn't go as much as fifteen days without having any.

Mr. CARMODY: You never do that?

(158) The WITNESS: No.

Mr. CARMODY: Not even in the summer time?

The WITNESS: No, sir.

Mr. CARMODY: Let us look at the card first and see what it is.

Do you want to look at this and see what the card says and how the record is made up? This is a road trouble report, and the coach number, and the date, and the office dispatcher, and the place, and location, and you suspect that is the location of the accident or the holdup, and the time, and the trouble reported, and is this the driver's name here, and here is "stopped". Would that be a red light, or what would that be?

The WITNESS: The bus stopped.

Mr. CARMODY: It doesn't say why.

The WITNESS: Well, that is a report that comes over to the office.

Mr. CARMODY: Some of these are signed by mechanics, and some not. Here is one "chain". Did the man forget to take them?

The WITNESS: The chain broke.

Mr. LYNCH: Maybe some time the driver wouldn't know and that is why they would dispatch a mechanic over to find out.

By Mr. CARMODY:

Q. Here is one, "frozen up". What would that (159) mean? A. That means that the alcohol probably wasn't tested the night before.

Q. What does "stuck" mean? A. That might mean a ditch.

Q. Snow or ice? A. Everything, yes.

Q. Here is one, just "stopped".

"Brakes frozen up and water in the air line." That is a little more specific.

Here is one "Motor locked" and another one, "tight chains"—and another one, "brake pedal broke".

Mr. HUGHES: Are there any rules for keeping those reports, Mr. England, do you know? I mean, by any of the public utility commissions?

The WITNESS: None whatever.

By Mr. BLUM:

Q. Do you have a similar period, for a corresponding year of 1934? A. No, sir.

Q. How did you make your contrast as to the greater number of accidents, or greater number of service calls? A. We have been very close to the operation, and we have grown quite fast in the last year, but up to that I could almost tell you each and every man, every time that he was reported, because I have lived right with them. (160) Q. But you stated that you had a greater number of service calls, or a greater number over what period, contrasted to what? A. What we had been having previously. That is, different types of service calls.

Mr. HUGHES: Did you mean from month to month or from year to year? Are you comparing the month this year with the month of last year, or what?

The WITNESS: I was comparing a general condition, the year before.

By Mr. BLUM:

Q. The year before? A. Yes.

Q. Did you have less business the year before? A. Yes.

Q. How many more buses did you have this year than last year? A. We had 21 new ones, and the new ones shouldn't—they should cut down service calls, and not increase them.

Mr. CARMODY: That depended on how many of the old buses you retired. Do you retire an old bus every time you buy a new one?

The WITNESS: Not every time. We have retired some.

Mr. BLUM: You had more business in December of this year than you had in December of 1934?

(161) The WITNESS: Yes.

Mr. LYNCH: Are you able to tell from your intimate contact with these buses, the fact that they have been having more breakdowns in recent months, irrespective of the fact that they have taken on new buses?

The WITNESS: We have had more breakdowns, yes, sir.

By Mr. BLUM:

Q. When you say "more breakdowns"—in comparison to what? What are you basing your comparison on? A. As to the number of road calls that I know that we did not have before.

Q. What is that due to, the increase in the number of buses? A. No, I wouldn't say so.

Q. Was any portion of it due to the increased number of buses? A. Very little, if any.

Q. And what do you attribute these to? A. To the work not being done properly; on numerous occasions, the driver has reported a bus to me and I have sent it in to the garage, and the next day the driver would come to me and say, "I turned this bus in yesterday for different things, and I get it right back in the morning with nothing being done on it, and it is in the same condition that it was yesterday.

(162) Q. Wasn't Mr. Wilsey in charge of all of that work at the garage? A. Yes.

Q. And wouldn't it be his job to see to it that the bus got out properly? A. It would be to see that his men get it out properly.

Q. And he is still employed up there? A. Yes.

Q. And he is in charge of the hiring and firing up there, isn't he? A. That is right.

Mr. HUGHES: He didn't do all of the work himself, either, did he?

The WITNESS: He is a night foreman, and he wasn't there himself.

Mr. LYNCH: Did he have a night foreman and a day foreman?

The WITNESS: Yes.

By Mr. BLUM:

Q. Did you put on any more new mechanics when you put on the new buses? A. Yes.

Q. How many? A. Oh, 3.

(163) Q. When were they put on? A. At different intervals. Some were put on, and left, and we put some more on.

Q. How soon after the 21 buses were added was the first one put on? A. The 21 buses were not added all at one time, but they were added from November, 1933, until November, 1935, and at no time were over six put on at once, and on several occasions one and two were put on at a time.

Q. How many new buses did you have when you put on the first new man? A. I don't remember right offhand.

Q. Do you have any records on that? A. I suppose we could check records on that, and pay rolls ought to be able to check that.

Q. Were all three taken on before the 21st bus was added, or after the 21st bus was added. A. I haven't that.

Q. Your pay roll record would check that, too? A. It should, yes.

By Mr. LYNCH:

Q. How many men do you have over there making records, will you tell us, please? A. I only have two cashiers, a night cashier, and a day cashier.

Q. Is that the only office help you have? A. That is the only office help I have.

Q. And you and those cashiers handle all of the of-

(164) fice? A. Yes.

Q. And all of the money coming in from the buses? A. Yes, sir, and correspondence.

Q. You don't have any expert statisticians and things of that sort? A. I do not.

Q. Is that a recapitulation that you made as to the number of service calls? This takes it down to what month? A. To the 20th of March.

Mr. LYNCH: I offer these in evidence, rather than to check off each of these records. It is just a recapitulation of the records.

Mr. BLUM: I object to them.

Mr. CARMODY: What do they show?

Mr. LYNCH: Number of calls.

The WITNESS: I made those myself. You check any date in here, and you will see that it corresponds to the same one.

Mr. CARMODY: I will pick out February 18th. I find 18 calls here.

The WITNESS: That is right.

Mr. BLUM: May I state the reason for my objection?

(165) This witness has been asked if it wasn't true that they had more service calls during this period than at any other time, and he is merely offering a record to show how many service calls he has had, with no comparison at any time at all, so it does not serve to show the basis of following up that question.

Mr. LYNCH: We may as well understand that this company is not the Pennsylvania Railroad Company, and we have two cashiers over there, and that is all, and they never kept records before, but Mr. England has said from his own personal knowledge what he knows to be a fact, and the types of calls. I submit it is perfectly proper for what it is worth, and I submit it is worth a lot in this record.

We can't because after all the expenditures would amount to a great deal, like this, in a small company.

Mr. BLUM: All that may be true, but that still doesn't serve the purpose for which they were introduced.

Mr. HUGHES: In any case, Your Honor, doesn't it show enough accidents—what does it matter whether it shows too much or too little, but it certainly shows a reasonable basis for the action taken.

Mr. CARMODY: Of course, the basis on which they are kept shows very little, and they may show a great

deal to Mr. England, and to a bus operator, but I can't believe that they will show very much to anybody else. (166) They don't show me anything at all. For instance, take this 18, in which there were a large number of calls. I can't read part of it, something was frozen, and another one, gasing, and I don't know what gasing is. Is that an accident?

The WITNESS: These are service calls, and breakdowns on the road.

By Mr. CARMODY:

Q. What is gasing? What does that mean? A. That may mean a leaking exhaust, where the gas may be coming through.

Q. And it may be an extremely cold day in February, and it might have been held out somewhere longer than schedule called for, and he might have had to make some detours, and they don't show anything. A. Let us go back into December, and let us go here in March when the weather was good.

Q. Let us go back into December, and I don't know what the weather was. A. We had some very good weather here the first of March, and the last week of February, and it was exceptionally good.

Q. Again we are going on our memory. Let us take this in January. Here is the 2nd of January, "Oil fan". (167) What does that mean? A. It means that the driver described that, and it means that the fan is dry, and it didn't have any oil in it.

Q. Did he have to oil it, or was this something that he turned in to the shop to have done? A. These are all service calls, road service calls, and they are not shop calls.

Q. Somebody had to go out and actually service this bus? A. Yes.

Q. Stuck. A. Well, I think that gives the place where it was stock.

Q. It doesn't say what it is. A. The shop man goes out there.

Q. "Can not get up the hill" and it doesn't say whether it was ice on the hill, or had no power, or what; and here is one "stopped". A. And we don't know why it stopped, but the mechanic found out when he got there.

Q. And here it says "chains".

By Mr. BLUM:

Q. Are all of these reports, reports of the men that have been discharged or of men in your employ? A. In our employ.

Q. And a lot of them are men still working in your (168) place, is that true? A. That is true.

Mr. BLUM: I renew my objection.

Mr. CARMODY: That is right.

Mr. LYNCH: Were the roads passable all winter over there, buses actually operating over the routes?

The WITNESS: Yes, sir.

Mr. CARMODY: On time?

The WITNESS: No, not on time all of the time. It was off more time during the flood than any time during the year.

Mr. CARMODY: The water came up and got in the carburetor, and you would get a trouble report?

The WITNESS: Yes, sir.

By Mr. LYNCH:

Q. Did you have any trouble with carburetors over there, Mr. England? A. Yes, we did.

Q. What was the trouble over there with the carburetors? A. We found a lot of sand in them, and we thought it was sand. We turned it over to the gas people, and they haven't determined yet just what the substance was.

Mr. HUGHES: Who were the gas people?

The WITNESS: The Independent Oil Company.

Mr. LYNCH: Did they have complaints about any- (169) body else other than about the contents of the gas, and inefficiency of the carburetors?

The WITNESS: We asked them and they have no other reports.

Mr. CARMODY: Were any of these men dismissed charged with putting sand in the carburetors?

The WITNESS: That was one of many things.

Mr. CARMODY: But you haven't yet found out whether or not that really came from the gas or came from some other source.

The WITNESS: We knew it didn't come from the gas, but we found it in the gas, and we found it in the carburetors.

By Mr. HUGHES:

Q. Where does that gas come from that you are sold by the Independent Gas Company? A. The City Service Company.

Q. Did you ask them to investigate? A. They haven't been able to find what it is, and they have never had any complaints from anybody else, and they couldn't understand why we had it.

By Mr. CARMODY:

Q. How is it delivered to you? A. In tanks, in wagons.

(170) Q. Where is it stored? A. In our garage, beneath the floor, in tanks.

Q. When were the tanks installed there? A. Installed?

Q. Yes. A. One of them was installed in 1926, and one was installed late in the fall of 1935.

Q. How do you clean them out? A. You don't clean gas tanks under the floor.

By Mr. HUGHES:

Q. When did you first notice this carburetor condition that you just described? A Around about the 15th of December.

Q. How long did it continue? A. It continued, and we had a lot of trouble there *there* until we got rid—or got the tanks and carburetors all cleaned out, and it

shows up now every once in a while, and I don't think that we will ever get it all out of the tank.

Mr. CARMODY: In all of the cars?

The WITNESS: In a good many of them, and I wouldn't say every one of them, but we had more or less trouble with that, of that particular nature, at one time.

Mr. CARMODY: That happened to my own tank, and I know that it is very difficult to get it out, and I don't know how it got in. It came in through the gasoline, I assumed.

(171) Mr. LYNCH: That is all for our case.

By Mr. HUGHES:

Q. I would like to ask one more question.

Mr. England, you have testified here relative to your conversations with these various men who have come in singly and in groups, and wanted to discuss with you this business of the union.

There is nothing very mysterious about those conversations; they just came in and talked to you in the usual way? A. Right.

Q. And they didn't pop out one question, did they? A. No, sir.

Q. And you discussed various things, and there wasn't any attempt, at least—put it this way: There was no effort on your part to keep the men from coming in to see you, and it was easy for them to see you, was it not? A. Always.

Q. They didn't have to make a written request or anything like that to discuss anything with you, did they? A. My office door is open any time for any of them.

By Mr. BLUM:

Q. Does Mr. Arnold own the Independent Oil Company also? A. Does he own the Independent Oil Company?

Q. Yes. A. He is president.

(172) Q. What did you say? A. I can't tell you what he owns.

Q. Mr. Hughes asked you about casually discussing

with these men, and that you might have asked them if they were members of the union, and that is exactly what I asked you before.

Mr. HUGHES: I didn't ask that, whether he asked them whether they were members of the union.

By Mr. BLUM:

Q. They told you that they were members of the union, and I asked you before, what was the other conversation? Can you recall that now? A. Oh, at different times, we talked at different times. We talked, and I am very close to the men, and they come in and sit down and play cards on off hours, and they come in and chat and talk about their run, and different things, and they have been all very close to me.

Q. What was the conversation that led up to any one of them telling you that he was a member of the union? This fellow Johnson, for instance? What was the conversation that led up to that? A. Well, he came and asked me for my advice, and that is what I told you this morning.

Q. What advice did he ask you? A. What I thought of the boys joining the union.

(173) Q. If I remember your testimony before, you said that Mr. Johnson came in and told you that he was joining the union, and you left to go to a wrestling match; is that true? A. That is true, in so many words.

Q. Now, you say that he also— A. I don't say that he came in. I said down at the terminal.

Q. Now you say that on that same occasion that he told you the other men were joining the union? A. That is what I told you this morning.

Q. If I remember your testimony as I have it written down here, you didn't find out until the next day, when you spoke to five other people and they were members of the union? A. I had no knowledge of the others than what he told me. The next day I didn't know how many had joined.

Q. You spoke of six other drivers the next day? A. Yes.

Q. And they told you that they were members of the union? A. One of them told me he wasn't.

Q. I see.

Mr. CARMODY: Which one was that?

By Mr. BLUM:

Q. Which one was that? A. Crissman.

(174) Q. What was said? A. I said, "Are you telling me the truth" and he said, "No, I might as well tell you".

Q. Why were you so insistent? A. Well—

Q. Is it merely a matter of curiosity? What made you doubt the man's word? A. Why, I can look right at a man and tell whether he is telling the truth, because I have asked questions before.

Q. Why were you anxious to get the truth? A. Why, if I ask a man a question, I always like to get the truth.

Q. You didn't care whether he was a member of the union or not? A. I didn't.

Q. Why were you anxious to get the truth? A. You ask a man—you are asking me, and I am telling you the truth.

Mr. LYNCH: He has got a right to find out if he wishes.

By Mr. BLUM:

Q. When was it that the first of these 35 men came to you and asked, or said that they would like to withdraw from the union, and asked your advice about that? A. When was it?

(175) Q. Yes. A. I don't just remember the dates, when it was.

Q. Was it after these men had been fired? A. No, sir.

Q. Did any of them come to you after these men had been fired? A. One man, I think, and I am not really positive of that. I think there was one man came in after that.

Q. Now, when you are breaking in a new man, does it cost the company anything to do that? A. Does it?

Q. Yes. A. Yes.

Q. Don't you ask a man to spend some time at his own expense in learning the routine? A. We do, usually.

Q. How long a period of time does he work that way? A. It takes him about seven days to break in properly.

Q. And during that seven days he gets no salary, is that true? A. That is right.

Q. Now, when did you first start breaking in new men? A. When?

Q. Yes. A. I would have to refer to my records, I think it was about the 15th of December.

(176) Q. It only takes them a week to learn, you say. What happened to them after you broke them in? A. What happened?

Q. Yes. A. We put them to work.

Q. In place of whom? A. We have let other men go since the 15th of December, besides these men, sir, and we started to make this cleaning from the reports that we had back in December, and we hired these men and put them on, as I told you, and we only got one out of every five that we can keep, and it takes time, more than a week, to break them in. We have been breaking them in from that time, up until the present time.

Q. When did you first start breaking in the men to replace the drivers who were dismissed the first week in March? A. The first week in March?

Q. Yes. A. From the 10th of February, I would say, approximately.

Q. What happened to those men that you were breaking in on the 17th, when they were already qualified to be drivers? A. On the 17th of what?

Q. February. A. On the 17th of February?

(177) Q. Yes. A. They didn't all qualify, sir.

Q. Did any of them qualify? A. Some, yes.

Q. What happened to those men? A. They took the places of men that we had let go previously, as a matter of fact we were just a little bit short of men, and we let them go a little faster than we should have let them go, before we let the other men in, we hired some, and they didn't come up to standard, and we could not put them on the buses

Q. How many of those men that you started putting on February 10th, took the place of these men that have been dismissed recently? A. I don't remember just how many.

Q. Did you start breaking in any other men after February 10th? A. After February 10th?

Q. Yes. A. Yes.

Q. When did you start breaking in these other men? A. I don't remember the particular dates.

Q. Did you break in any the last week in February? A. Yes.

Q. Who was responsible for this advertisement that (178) appeared in the newspapers on February 29th? A. Mr. Wilsey.

Q. Mr. Wilsey? A. Yes.

Q. Did he have to get your permission or sanction to put it in? A. He talked it over with us, yes.

Q. Did he tell you the type of advertisement that he was going to put in? A. Yes.

Q. Did he tell you how many men he was going to ask for? A. Approximately, yes.

Q. How many mechanics did he tell you that he was going to ask for? A. Approximately a dozen. These are men, mechanics, and others. I can't tell you how many.

Q. Was it more than one? A. Yes, sir.

Q. Why does the ad read "mechanic"—singular? A. I can't tell you that, sir.

Q. But it is plural on the other men here, on the helpers and cleaners. A. I couldn't answer that question.

Q. But you had discussed more than one person? A. Yes.

(179) Q. Are you familiar with the answer that was filed in this case by the attorneys for the company? A. Well, I am not a lawyer, but I am fairly familiar with it.

Mr. HUGHES: It is filed with the company.

By Mr. BLUM:

Q. Was it explained to you thoroughly by the attorneys? A. If you ask me a question I can't answer, I will tell you.

Q. On page 5 of the answer; do you have a copy there? A. Yes.

Q. About the middle of the page, what did you mean by this:

"Efforts to form the said union met with obstacles by reason of the fact that no union had theretofore been formed in respondent's business, and its employees were unaware of the advantages to be derived from a labor

union and hence it was necessary to explain to the said employees in what a labor union consisted"—

Who did that explaining?

Mr. LYNCH: Ask him if he did it.

By Mr. BLUM:

Q. Do you know who did that explaining? A. Explaining to the drivers?

(180) Q. Yes. A. The drivers came in and asked us, as I told you, about the conditions of the union, and we couldn't tell them in reference to their own situation.

Q. Well, it says here that it was necessary to explain to the said employees in what a labor union consisted and in what way it would operate, and what advantages would be derived therefrom."

Who did that explaining? Do you know who did the explaining? A. I don't know.

Q. Were you there when the explanation was given? A. Not at all times, no.

Q. Were you there when this explanation was given? A. No.

Q. Do you know whether or not any representative of the company had explained the advantages and disadvantages of a union to the employees at any time? A. Advantages and disadvantages?

Q. Yes. A. I don't know of any advantages, and I don't know that anybody would know within the company, the advantages.

Q. And how about the disadvantages? A. I don't know anybody who would know the disadvantages within this particular union.

Q. Then can you answer why this appears in the

(181) answer?

Mr. HUGHES: The answer is signed by Mr. Arnold, and he didn't sign the answer.

By Mr. BLUM:

Q. Were you there when the answer was explained, and you testified to that before, by the attorneys that drew it? A. The answer to that—I don't just remember that particular paragraph.

Q. I think I asked you if you read it, and was it explained to you.

By Mr. Carmody:

Q. Mr. England may not know that this is the answer. A. I know that this paper is the answer.

Q. I thought that you referred to some other answer that somebody gave. He is referring to this particular document which is the official answer to the complaint. A. I would like to answer that this way: That I do think that the employees were unaware of the benefits that they would get out of the union. I don't think that they knew. I think that they had been told many things, and they told me, that they would derive out of this, that I never heard of anybody ever getting.

By Mr. Blum:

Q. Did you tell them that? A. Did I tell them that?

Q. That you never heard of anybody getting the (182) advantages that they said that they were going to get? A. Yes. I never heard of any outside of that.

Q. Did you tell the men that when they asked that question? A. I never heard of any advantages.

Q. That is right. A. I have never heard of any.

Q. Did you tell the men that? A. I possibly did.

Q. Will you say positively that you told them that? A. No, sir.

Q. Do you have a hazy recollection that you told them that? You might have told it to the men, is that true? A. Perhaps.

Mr. Blum: I think that is all.

By Mr. Hughes:

Q. I direct your attention to page 5 of this answer, and will you read the beginning of that paragraph, and read it aloud? A. Page 5, paragraph 15?

Q. Yes. A. "Thereafter the management, on or about February 28, 1936, learnt for the first time efforts were being made to form a labor union among employees."

Q. In other words, you didn't know anything about (183) an effort to form that union until February 28, 1936? A. That is correct, sir.

Q. So that during the period of time that it has been

testified to that things were going wrong, you never knew that any labor union was actually being formed at that time? A. I did not, sir.

Q. Nor did you know that anybody was doing it, whether it was a professional labor organizer, isn't that so? A. That is so.

Q. There is no question about it, isn't that so, and during that time you didn't discuss the matter with Mr. Arnold. A. I did not.

Q. Now, coming down here below "Respondent herein subsequently learned that a person going under the name of Giffin who makes his living by persuading employees to form a union for their own benefit in a company where no union had before his arrival existed, came to respondent on or about September 1, 1935"—

Mr. CARMODY: What page is that?

Mr. HUGHES: Page 5.

"Persuaded respondent to employ him as a working mechanic. Thereafter the said Giffin, as respondent is informed and believes and hence avers, pretended to work in respondent's repair garage as a workman but, in reality, his principal occupation therein was to per-
(184) suade several employees of the night and day force in the garage to form a nucleus of employees which in turn was to use Giffin's arguments to persuade other employees that it was to their benefit to create a labor union. Efforts to form the said union met with obstacles by reason of the fact that no union had theretofore been formed in respondent's business and its employees were unaware of the advantage to be derived from a labor union, and hence it was necessary to explain to the said employees in what a labor union consisted, in what way it would operate and what advantages would be derived therefrom."

Now, you never signed this answer, did you? A. No, sir.

Q. But at the same time you say that you read it over and it was explained to you? A. Yes, sir.

Q. Now from your knowledge of that explanation, did you mean by that sentence to infer that anyone in the company explained the advantages of a labor union to

the men, or did not that refer to some labor union man explaining the advantages? A. That refers to the labor union man, or whoever he might be.

Q. And no effort was made on your part actively to talk to the men about a union or explain it to them or (185) anything of that character, is that right? A. That is correct.

Q. And the only time that you talked labor union was when somebody came to you and talked it to you, isn't that so? A. That is so.

Mr. HUGHES: Now I would like also, Mr. Examiner, if you please, to recall Mr. Arnold for just one question about that section of the answer. He signed it, and I would like to have his testimony about what he thought.

Whereupon MR. LEON ARNOLD was recalled as a witness, and having been previously duly sworn, was examined and testified as follows:

By Mr. HUGHES:

Q. Mr. Arnold, I will ask you whether this sentence, "Efforts to form the said union met with obstacles by reason of the fact that no union had *theretofor* been formed in respondent's business and its employees were unaware of the advantage to be derived from a labor union, and hence it was necessary to explain to the said employees in what a labor union consisted, in what way it would operate and what advantages would be derived therefrom". Does that refer to the efforts of the labor union organizer, or your own efforts?

A. My conception of that was that it was the union (186) organizer.

Q. And you never made any effort to explain to them the advantages or disadvantages of labor organizations? A. No.

Q. You never talked to them except when they came to you? A. I have talked to them.

Q. When they came to you? A. That is right.

Mr. HUGHES: That is all.

By Mr. BLUM:

Q. Did you ever explain the advantages of or disadvantages of a union to them? A. No, I can't say that I have.

Q. Just what sort of conversation did you have with them, if you can remember? A. Many different ones.

Q. Just state one. A. Well, I told some of them of my experience of unions, and things that I have seen, as far as I have been associated with in any way. I have never been in any companies where there was an organization, and it has only been from observation, the things that I have seen that have worked to the disadvantages of the company and of the employee, but all that I did (187) talk to I have told them that they yould have to use their own judgment, and it wasn't up to me to tell them, nor have I talked to any of them to try to persuade them not to, or threaten them in any way, shape or form.

Q. But when you talked to them and told them to use their own judgment, you did tell them of the disadvantages of the organizations that you have observed, is that true? A. Not of this organization, because I knew nothing of it.

Q. But disadvantages of others that you have seen? A. I told them of some things that I have seen.

Mr. HUGHES: Did you think that you had a perfect right to do that?

The WITNESS: No.

By Mr. BLUM:

Did you tell them of any advantages that they might have gotten as a result of their union organization? A. I answered questions, more or less, and they told me, or a percentage of them, that the reason that they went in was because they were told of the advantages of the company, and some of them mentioned advantages for themselves, and the company, and a great many of them did not, but they mentioned the advantages of the company, as the reason they signed.

Mr. HUGHES: And you first learned about that on (188) the 27th of February, about that time? A. Was that a Friday?

Q. Yes.

By Mr. LYNCH:

Q. Did you know of any advantages it would be

for the company to have the union over there? A. Under present conditions, I would say no.

By Mr. BLUM:

Q. Now, Mr. Arnold, when you say that you interpreted this clause to mean that the union organizer explained the advantages of a union, who did you mean, who was the organizer you had in mind?

Now, you had Mr. Giffin, who has been referred to here, and then you had Mr. Clark, who was a follow-up man, and on some intervals, Mr. Giffin and Mr. Clark.

To whom did you refer in this instance when you state that the advantages were explained?

A. I wouldn't say that I referred to any particular one. It was Mr. Giffin and Mr. Clark, and they are the only ones that I knew anything about. I didn't find out about Mr. Giffin for quite a while after.

Q. You mentioned Mr. Giffin by name. A. I didn't find out about Mr. Giffin until some time—maybe the 5th or 6th or 10th of March.

Q. In this answer, at places you refer to Mr. Giffin (189) by name, and other places you refer to Mr. Clark by name, and if you didn't know who the organizer was— A. Beg you pardon. I never referred to either one separately. I have referred to them both together.

Q. I am talking about the answer.

Mr. HUGHES: What part of the answer?

Mr. BLUM: The section 15 mentions Mr. Giffin, and paragraph 16 mentions Mr. Clark and Mr. Giffin.

Since you refer to Mr. Giffin by name in paragraph 15, and since you refer to Mr. Clark by name in paragraph 16, and you didn't know the organizer you had in mind, why didn't you put in your answer, or ask that it be inserted in your answer, the words "labor organizer explained"?

You refer to Mr. Giffin at the top of page 5. of paragraph 15, and in paragraph 16, you refer to both Mr. Giffin and Mr. Clark?

Mr. LYNCH: Are you complaining about the answer as too full, or not full enough?

Mr. BLUM: It is very vague.

Mr. HUGHES: If the Greyhound Bus Line was a model, it would be five lines, but we wanted to show the facts.

Mr. LYNCH: In a case of this kind, the complaint is only two pages long, or two and a half, and I submit that the answer is very full, and most fair.

Mr. BLUM: I would like to compliment my brothers (190) on the fullness of the answer, but on this particular point there is a vagueness that ought to be explained.

Mr. LYNCH: Are there any more questions, Mr. Blum?

Mr. CARMODY: I am not clear yet on this paragraph 15; if the employees have a right to organize, and if as has been testified here, the employers are not concerned with whether the men organize or not, that is, organize into an organization of their own choosing, as they have a right to do under the law, if the law is a law, then why all of this business about who had to explain the benefits of a union to the men? Why is the employer interested in who explains the benefit or whether they are explained?

I would like to have Mr. Arnold answer that.

The WITNESS: I might say this: There is nothing at all that any of our employees have come to ask me, that I haven't tried to answer them honestly. I have been interested in my employees, and also their families, on many different occasions, and I don't see why there should be any conception of this when they come to ask me why I should, and I don't know why I shouldn't, and can you tell me why I shouldn't?

Mr. CARMODY: Except that the law says that they have a right to choose their own organization, and their own representatives, for the purpose of collective bargaining with their employers; presumably, the employer is not likely to advise them to join a labor union, which they have a right to join, and there are very few em- (191) ployers that have a right to do that.

Mr. ARNOLD: I don't contend that I advise them or

disadvise them, and I can't see why I wasn't at liberty to answer them on that particular thing, just as well as I was on anything else.

Mr. CARMODY: Leaving that aside entirely, I still don't understand in this paragraph 15 why you were concerned with the fact that they didn't know the benefit of joining a union.

I am only reading the answer.

The WITNESS: Why I am not concerned with the benefits?

Mr. CARMODY: Why you are concerned with the benefits. It says "efforts to form the said union met with obstacles by reason of the fact that no union had *theretofor* been formed in respondent's business and its employees were unaware of the advantages to be derived and hence it was necessary to explain to the said employees in what a labor union consisted, and in what way it would operate, and what advantages would be derived therefrom."

Now, when I read that answer, I assumed that that was your answer, and that you were required to do this explaining. It never occurred to me until the cross-questioning here, that this has nothing to do with your relation to your employees, but this is something that somebody else had to do with. How did that get in the (192) answer?

Mr. HUGHES: I can answer this: I will state it under oath, if you like.

We heard on the 28th of February, and around about that time, that Mr. Giffin had come to work for the company in September, and had started organizing the union at that time, and Mr. Clark had come in some time, as I recall it, in January, so that when the answer was being prepared, I asked Mr. Arnold how it happened that it took all of that time to organize a labor union, and he said that I suppose we never had a labor union and nobody knew much about it, and it took them that length of time to explain the advantages and disadvantages of it.

Mr. CARMODY: It took the organizers that long?

Mr. HUGHES: I put it in there to give the entire picture because it seemed to me a very queer thing that it should have taken that length of time.

Mr. LYNCH: Right on that point, because it is the very thing that we have contended right along, when I first talked to Mr. Arnold about the matter, information had come to me that some of these people had signed up and wanted to withdraw, and I suggested that the Government, without any interference with anybody, go over and make a check to see how these fellows stacked up, because these mechanics don't use the same judgment that a professional mind would, or a man in his own (193) business, and sometimes they may be persuaded, or may be subconsciously one way or the other by a relative or a friend, or something that the employer might say, but get to these people and tell them.

I have talked to some of these men to ask them about these things after this complaint was filed because it was my duty, and some of them told me that they went into it, and told me different stories, and I said:

"Well, do you know this"

and many of these fellows didn't know just what they were doing, and some of them did.

Mr. BLUM: I move at this point that the remarks of Mr. Lynch be stricken from the record, and I am going to ask for that ruling, that Mr. Lynch's remarks be stricken from the record, and Mr. Hughes' remarks remain.

Mr. CARMODY: Sustained.

I have one or two questions of Mr. England, and then we will recess, if you don't mind.

I have never gotten straight in my mind, Mr. England, whether when Johnson came to you first, he told you he joined the union.

Did he tell you that?

The WITNESS: Well—

By Mr. CARMODY:

Q. He is the first man that came to you? A. He told me—

(194) Q. He told you? A. Yes.

Q. And did he ask you whether he should continue his membership or give it up? A. Not at that time.

Q. He merely told you that he had joined the union? A. Yes.

Q. That was just before you went to the wrestling match? A. Yes.

Q. Now, were you a member of the bus code during N. R. A.? A. Well—

Q. Did you sign any code or the President's Code? A. We did, yes, sir. We had a stay from the Code.

Q. You mean you were not governed by it? A. That is right, sir.

Q. Why? A. Because we showed conditions that the Government released us from operating under it.

Q. Did you post a copy of Section 7 A at that time, on your property anywhere? A. We did more than that. We talked it over with them.

Q. You told them that they had a right to join a (195) union? A. Yes.

Q. Are those notices still posted on your property? A. No, sir, I don't think so. I won't say that they were posted at that time. We took the men in and told them just the *condjtions* and all, and they said that they would rather not go into it.

Q. Is there any notice on the property now, anywhere, to the effect that men may join a union if they wish? A. Not that I know of.

Q. When these new drivers were employed, early this year, to take the place of the men who were leaving, did you ever discuss labor organization with any of them? A. No, sir.

Q. Did you ever tell them that they were free to join a labor organization if they chose? A. No, sir, I did not, one way or the other.

Q. You didn't say that they ought not or might not? A. No, sir.

Q. Do any of them belong to the union? A. Not that I know of, sir.

Mr. CARMODY: That is all. We will recess until ten o'clock tomorrow morning.

(Whereupon, at 2:45 o'clock p. m., the hearing was adjourned to tomorrow, Tuesday, March 24, 1936, at 10:00 o'clock a. m.

(197)

SECOND DAY.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

FIFTH REGION.

In the matter of

Washington, Virginia and Maryland Coach Company
and
Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 1079 et a. } Case No. C-63.

Room 407, Denrike Building,
National Labor Relations Board,
Washington, D. C.,
Tuesday, March 24, 1936.

The above-entitled matter came on for hearing at 10:00 o'clock a. m., pursuant to adjournment.

Before: John M. Carmody, Member of Board.

Appearances: Jacob Blum, Charlton Ogburn, Arthur Reyman, for the Union. Robert E. Lynch, Wm. J. Hughes, Jr., for the Company.

(198)

PROCEEDINGS.

Mr. CARMODY: Are we ready to proceed?

Mr. BLUM: I am ready.

Mr. CARMODY: We will come to order, please.

Mr. BLUM: Mr. Harmon, will you take the stand, please?

Whereupon JOSEPH R. HARMON assumed the stand on behalf of the Board, and having been first duly sworn, was examined and testified as folows:

Mr. LYNCH: Mr. Chairman, you will recall at the close of the hearing last evening, Mr. England was still on the stand, and there were a few questions more that we wished to ask him on cross examination.

We also wish to state to the Examiner that we have secured the man that made those reports, in view of the Examiner's ruling that was made yesterday, and we would like to put him on the stand merely to prove those reports for a second, so that we can then cross examine Mr. England further on them to meet the requirement which would be made by the Board.

Mr. BLUM: I am certainly going to object to that. I am not going to let you put on your defense at the time I am putting on my case.

Mr. LYNCH: It was a ruling here of the Board that the man that made the report should be available, and (199) now we have secured him.

Mr. BLUM: That is a matter of defense because it is alleged in your answer.

Mr. LYNCH: When a person takes the stand and he is called here, and he was asked both by the attorney for this labor union, why he dismissed these persons, and we have a right to get the full facts in the case, as to why he dismissed them, and if part of those facts consist of a report, call it confidential or otherwise, furnished him by a party, and if we can produce the party that made those reports and then cross examine him on it further, we have a right to do so.

Mr. BLUM: You certainly don't have a right to cross examine this man who made these reports, because I haven't called him as my witness. You can put that witness back on your side when you present your case.

Mr. HUGHES: Mr. Examiner, I submit that we have a right to cross examine Mr. England, and after all he

was the Government's witness, and we have a right to cross examine him.

Now, we got to the stage of showing the reasons why these men were fired, and Your Honor ruled that we had a right to show those reasons, and when we got to the part of the reasons, namely, the part of the investigator, you said that you didn't know the circumstances (200) under which the investigation was made, and you have to have it before you could permit anything further on that score.

So that when I asked Mr. England whether the reports of the investigator were adverse, and other questions of that character, you ruled them out. Now, I submit that they are proper questions on cross examination. If you want to make it as a preliminary to those questions, that the investigator should be here, and I understood that was the ruling yesterday, we have a right to put that investigator on as a preliminary to further investigation, and we have the man here.

Mr. CARMODY: Let us proceed with some of these witnesses who have complained, and then we will go to the other witness who was brought in here at our request. He will be here, I suspect, today.

Mr. HUGHES: It is understood that we haven't abandoned cross examination of Mr. England or Mr. Arnold either.

Mr. CARMODY: We will rule on that when we are faced with it, with the witness on the stand.

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your full name? A. Joseph R. Harmon.

Q. With whom were you last employed? A. Washington, Virginia and Maryland Coach Company.

(201) Mr. LYNCH: May I enquire of the Examiner whether or not it is a practice to exclude witnesses who will testify on points in corroboration of another witness?

Mr. CARMODY: Exclude them from the hearing?

Mr. LYNCH: That has not been done.

Mr. CARMODY: No. It has been the practice, as far as I know, at all of the hearings.

By Mr. BLUM:

Q. Now, for how long were you employed by the Washington, Virginia and Maryland Coach Company? A. Eight and a half years.

Q. In what capacity? A. Mechanic.

Q. Where? A. Clarendon, Virginia.

Q. Clarendon? A. Yes.

Q. What were your duties, Mr. Harmon? A. I had charge of the night shift there, and seeing that the work was done, and I was working foreman, I reckon you would call it.

Q. Did you have charge of directing the men in the work that they did at night? A. Yes, sir.

Q. And assigned them their various duties? A. (202) Yes.

Q. Now, were you a member of the local division No. 1079? A. Yes, sir.

Q. When did you join that organization, Mr. Harmon? A. Well, as I can remember it, around the 24th of January.

Q. Were you at the organization meeting? A. Yes, two of them.

Q. Was that February 24th? A. I wouldn't be certain about that. I can't remember the dates exactly.

Q. Were you a charter member of this organization? A. Yes, sir.

Q. Will you give us some idea of how this organization was formed? A. Well, Mr. Giffin came to me and asked me about the union, and he worked there with me for a while, and he knew the working conditions, and he asked me didn't I think that a union would be a good thing there, and I said I didn't know; he talked to the fellows, and so I met Mr. Clark, and I got Mr. Frederick, and we held a meeting over to his house.

Mr. CARMODY: Whose house?

The WITNESS: Mr. Frederick's.

Mr. HUGHES: When?

(203) The WITNESS: I can't recall the date; I don't know.

By Mr. BLUM:

Q. Did you solicit the other employees of the company to join that union? A. Some of them I did.

Q. How many employees were there at the Washington, Maryland and Virginia Coach Company at that time? A. At that time there were 74.

Q. 74 employees? A. Yes.

Q. How many of those employees became members of the union?

Mr. LYNCH: We object to him saying what men became members. Let him produce the records here. I suppose they have records to show what members have signed applications and paid their money, and what members have written in and said that they want to resign from the organization. I presume that they can resign from the labor organization just the same as any other organization.

Mr. BLUM: We can let you show all of that in your defense.

Mr. HUGHES: Could you ask him, or get the time of Mr. Giffin's coming to him? That has not been testified to. I think that we have a right to know that.

Mr. CARMODY: Let us go ahead with the case. There (204) is entirely too much bickering about quite immaterial things here. Let us go ahead with the direct examination, and then cross examine the witness, of course.

Mr. BLUM: We didn't have a ruling on their objection, Mr. Examiner, as to the number of employees that joined the organization.

Mr. CARMODY: He may answer it if he knows.

Mr. LYNCH: May I have an exception?

The WITNESS: There was 74, and I think that there was around 57 members.

By Mr. BLUM:

Q. Now, these 57 members, were they all employees of the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. Now, were you discharged from the employ of the Washington, Virginia and Maryland Coach Company? A. Yes, sir, by Mr. Wilsey.

Q. On what date? A. On the 6th, the morning of the 6th.

Mr. CARMODY: Of what?

The WITNESS: 6th of March.

By Mr. BLUM:

Q. Will you state the circumstances of your discharge, Mr. Harmon? A. Mr. Wilsey didn't have any (205) idea of firing me.

Mr. LYNCH: We move to strike that out.

Mr. CARMODY: It is struck out.

Tell about your own experience, and not what somebody else did.

By Mr. BLUM:

Q. What did Mr. Wilsey say to you? A. Around the 1st of March, I was talking with him, and he told me he was going to give me another mechanic at night, and another cleaner, and he was going to get my 10 per cent cut back, which had been promised me, and I never heard any more about it until March 3, the night of the 3rd, the night the meeting was held at Mr. Frederick's house. Mr. Joe Arnold attended that meeting, and Mr. Wilsey was in the office, late at night.

Q. What time of night was it? A. I will say around 11:30 or 12:00 o'clock.

Mr. CARMODY: Who is Joe Arnold?

The WITNESS: Mr. Arnold's son.

Mr. BLUM: And he was testified to as vice president of the company.

The WITNESS: I judge about 12 o'clock that night I was on duty and Mr. Wilsey came around the shop, and he asked to talk to me, and we went in the bus and sat there and talked, and he said that he was surprised at me for joining the union, and for not coming to him and asking him for advice, and I told him that I thought I (206) was capable of taking care of that, and he said that he belonged to one up north, and he paid out as high as $28 a month for men out of work and he said that Arnold was not going to recognize it, that he would put his buses in the lot and burn them before he would recognize them, and—

Mr. HUGHES: Of course that is objected to as hearsay, Your Honor.

Mr. CARMODY: I understand he is testifying to what Mr. Wilsey said to him.

Mr. LYNCH: But he is testifying as to what somebody else told Mr. Wilsey, which makes it hearsay. I move to have it stricken out.

Mr. BLUM: It was testified here that Mr. Wilsey is one of the officials of the company, and any statement of Mr. Wilsey is certainly binding on the company.

Mr. CARMODY: Mr. Wilsey will be on the stand, and he may deny these statements if they are not true. It is admitted.

Mr. HUGHES: Exception.

The WITNESS: Mr. Wilsey wanted to talk to Mr. Clark, the organizer, and I told him I had not had—

Mr. CARMODY: Did he ask you if you could arrange to meet Mr. Clark?

The WITNESS: That is right, and we left together to (207) go to Mr. Frederick's house, and we got one square from the garage, and we met—

By Mr. BLUM:

Q. Was there a meeting of the union that night at Mr. Frederick's home? A. Yes, sir, on March 5rd.

Q. That evening? A. Yes.

Mr. CARMODY: Is this the same night that Mr. Wilsey came to you and talked to you in the bus?

The WITNESS: Yes, sir.

By Mr. CARMODY:

Q. You had already been at a union meeting? A. On my lunch hour.

Q. At night? A. Yes, sir.

Q. And after your lunch hour Mr. Wilsey came to your garage and invited you into a bus and you sat there and talked and then after that talk did you go back to Mr. Frederick's or start back to Mr. Frederick's? A. Yes.

Q. With Mr. Wilsey? A. Yes.

Q. To see Mr. Clark? A. That is right.

(208) Q. This all happened on the same night? A. We met three or four fellows in a car and they said Mr. Clark had left the meeting, and it was just about the time that we turned around to come back to the garage and we met Mr. Arnold, Mr. Leon Arnold.

Q. The president of the company? A. That is right. And Mr. Wilsey said Mr. Arnold was going to go over and talk with Mr. Clark, and Mr. Arnold commenced talking, and said that he never had anything like that when he was coming along, and he wasn't going to recognize the union, and he said, you can put that in your God damn pipe and smoke it.

By Mr. BLUM:

Q. This was what time? A. Two or three o'clock, I would judge.

Q. What did you do after Mr. Arnold left you? A. We came on back to the garage.

Q. Who is "we"? A. Mr. Wilsey and I.

Mr. Wilsey and I went around to the office, and I went on with my work. I didn't hear any more about it until the morning of March 6th, and Mr. Wilsey came in at five o'clock in the morning, and he said, "Joe, it is waiting for you around at the office," and I said, "What,

my pay?" and he said, "Yes," and I went around and (209) Mr. England gave me my pay, and I said, "What am I fired for, joining the union?" And he said, "No, just the way you went about it."

Q. Did he say what he meant by that? A. He said that I should have come to him for advice.

Q. When Mr. England paid you off, did he say anything to you? A. He said that he was sorry to see me go, and that we had always gotten along, and that I had always done my work.

Q. Had anybody been working for the company longer than you? A. Not to my knowledge.

Q. Do you know of your own knowledge whether or not Mr. Giffin when he was in the employ of the company worked during the day at any time? A. He never did.

Q. He never did? A. No, sir.

Q. You know that of your own knowledge? A. Absolutely.

Q. That he worked under you at night, taking instructions and orders from you? A. That is right.

Q. If any breakdowns happened on the road at night while you were in charge of the shop, how would that (210) come to your attention? A. The cashier, Mr. Baxter, he would receive it, and he would call out on the phone to me, and explain it. I would either go myself, or send a mechanic.

Q. Now, during the months of December, January and February, did you have an unusual number of service calls? A. No, sir.

Q. What were most of those service calls made up of? For what reason were most of those service calls? A. Just little minor things, such as gas lines being plugged, when we didn't have enough help to clean the strainers, and things like that, sand and dirt getting in the strainers, and plugging the gas line, and distributor points, and stuff of that sort.

Q. This gas—or sand getting into the gas line, did that happen before any question of a labor union came up? A. That was last fall.

Mr. HUGHES: There is no testimony in here this far about when this question of the labor union came up. I tried to get you to ask him when Mr. Giffin first came in. We object to any testimony relative to it.

By Mr. BLUM:

Q. When did Mr. Giffin first talk to you about a labor organization? A. Some time early in February.

(211) Q. Of this year? A. Yes, sir. He wasn't employed there then, when he first mentioned it to me.

Q. Were you ever reprimanded by any of your employers or officials of the company for the failure to keep the buses in proper repair? A. I didn't get that.

Q. Were you ever called into the office and reprimanded for failure to keep the buses in proper repair or taking care of service charges? A. No, sir, never.

Q. Did any of the officials of the company, including Mr. Wilsey, make any complaint to you about the other mechanics that you had? A. Well, no, not exactly.

Q. What do you mean by that? A. At different times they would mention to me about buses being dirty and going out on the road dirty, but that was due to the fact that they couldn't clean them, like we had to put chains on during the winter time and icy weather, and we would let the buses go then, and we couldn't clean them, and I only had seven in the shop with me at night, and 48 buses to take care of, and two mechanics, and the same amount of mechanics when I got fired as there was when I went there in 1927.

(212) Q. And you had more buses at that time? A. That is right.

Q. How many more buses? A. Well, we had about 17 when I went there, and we had 48 when I got fired.

Q. When was the last time that you received any complaint about any of your other mechanics, or cleaners, or greasers? A. Six months or more ago.

Q. Mr. Harmon, where is the main gas tank located in the garage? A. The one we use the most is located in the front of the garage, where they fill it; the cap is all loose on it and it sticks out of the floor about an inch and a half, and the water floods all over that, and dirt and sand and everything goes in the gas.

Q. Where does that water come from that flows over the top of it? A. We have a washing machine there, and we wash buses on both sides of that.

Q. And all of the dirt from the buses and dirty water fills up over the top of that? A. There is no thread on the cap, where the cap screws onto it, but you just pick it up off there.

Q. Has that ever been reported to the company? (213) A. They should know it. It is filled every day by the gas man from the Independent Oil Company.

Q. Did you ever report it? A. Not to my knowing.

Q. Do you know whether Mr. Wilsey knew of that condition? A. He should have.

A new gas pump that they put in last fall, we had trouble with that, and it acted like it was half stopped like it had dirt or something in the pipe line, you know, and at the same time they were building in the back of the garage and installing the gas tanks at the same time, in the pump.

Q. There was a lot of building material around? A. Sand and gravel and dirt and cement.

Q. How far was that away from where this tank was being built? A. The full length of the garage, the first tank was at one end, and the last tank was on the other end or side of the garage.

Q. Now, where was this building material in relation to the new tank being built? A. All around just where they put the tank.

Q. Was the tank below the level of the floor, too? A. The tank was on the outside of the building, but the (214) pump was put on the inside, and they was tearing out both ends of the building at the same time, open doors so that we could drive straight through the garage.

Q. Did you ever notice while you were in charge at night, the congregating of men and neglecting their duties? A. No, sir, none whatsoever.

Q. Was there much discussion of union activities or organization in the shop at night? A. None whatsoever.

Q. Where did most of the union activity or organization take place? A. At Mr. Frederick's home, the men left on their lunch hour.

Q. On how many occasions? A. Two.

Q. When were those meetings held, or what time of the day or night? A. Well, I don't know just what time this started or what time it ended, but they attended them during the lunch hour.

Q. Was it held at night? A. That is right.

Q. And was the purpose of that to permit the night shift to come there on the lunch hour? A. That is right.

(215) Q. Was Mr. Griffin very active around the plant in attempting to organize or was his activity confined to the outside? A. I never heard Mr. Griffin say a word while he was there working for me.

Q. And his discussions with you, where did they take place, on the company property, or off the company property? A. He came in the garage, and mentioned something to me about it, and I told him to talk to the fellows, and I would see him later.

Q. On the day you were fired, was anybody else fired along with you? A. My whole night crew.

Q. The entire crew? A. Yes, sir.

Q. Were they all members of the union? A. Not to my knowing. I don't know. You would have to ask them.

Q. Can you give us the names of your night crew that were fired along with you? A. There was Garrison, Moore, Smith, Atwell, Dove, and myself.

Q. That is six. A. I had one man off sick at that time and they didn't let him go; and my regular men, (216) two nights before they fired me, they put two new men on with me and took my regular men off, Mr. Miller, and McCawley, on day work, and fired them from the day work. The two extra men that I had on at night, with me, they stayed there.

Q. Were those two extra men taken on as a result of that ad in the papers? A. Yes.

Q. Or after that ad in the papers. A. Yes, sir.

Q. Were all of your crew fired at the same time, the same night? A. All except these two extra men, and one man I had off sick at the time.

Q. All fired on March 6th? A. That is right.

Mr. BLUM: I think that is all, Mr. Harmon.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. You never made a report, did you, Mr. Harmon, of this defective top of the gas tank, did you? A. I didn't see where it was necessary.

Q. Did you make a report, Mr. Harmon, of the defective gas tank top?

Mr. BLUM: He has answered that.

Mr. CARMODY: It won't hurt to answer it.

The WITNESS: I don't know whether I ever brought (217) that in. I used to stay around and talk to Mr. Wilsey. I probably did and probably didn't. I just wouldn't say whether I did or didn't.

By Mr. LYNCH:

Q. Didn't you say that you didn't report it? A. Probably I didn't. I don't know. I just can't remember it.

Q. Did you think that there was water and dirt going in that gas tank every day when the buses were washed? A. I knew it.

Q. And did you ever call it to the attention— A. And also I complained to Mr. Wilsey about cleaning the tank out, not only once, but dozens of times.

Q. Did you ever go to Mr. England about the matter? A. I didn't see where it was my place to go to Mr. England.

Q. You saw Mr. Arnold in the garage from time to time, didn't you? A. I did up until six or eight months ago. I never saw him one time a month in the garage.

Q. And that condition relative to that dirt and water going in the gas tanks existed for how long a time? A. Practically ever since I have been there.

Q. For the last eight years? A. Eight and a half years.

(218) Q. And you think that that was the reason why you were having so many service calls on the road about the gas lines being stopped up?

Mr. BLUM: He didn't answer that. I object to that.

Mr. LYNCH: I will submit that question, if it is proper examination.

The WITNESS: I have a service man here.

By Mr. LYNCH:

Q. Did you think that was the cause of the gas lines

being stopped up and the dirt getting in the strainers? A. The biggest trouble, yes, sir.

Q. And that has been going on for how long a period of time? A. Quite a while. I don't know.

Q. Would you say for two years or more? A. I wouldn't say.

Q. Give us your best recollection on how long you think that has been going on. A. Six or eight months.

Q. Do you have your organization card with you? A. Yes, sir.

Q. Let me have it. Do you have a copy of your charter with you, and your bylaws? A. I don't have them, no.

Q. Are you an officer of the union? A. No, sir.

(219) Q. When was the first time that Giffin came in the garage and talked to you about the union? A. I just can't recall the date. He had been away from there for some time.

Q. He talked to you also while he was there, didn't he, Mr. Harmon? A. No, sir.

Q. He never mentioned it? A. No, sir.

Q. Did you ever talk to him about anything? A. No more than his duty.

Q. What were his duties? A. Repairman.

Q. How long did he stay there? A. I don't know. I have had so many, I wouldn't say, three or four months, something like that.

Q. Three or four months? A. Yes. I judge that long; I don't know; it might have been longer.

Q. And all during that period of time you never talked to him except about his work? A. Different little things, but he never did bring up the union.

Q. Did he ever talk about working conditions there?

(220) A. Well, they all complained about that.

Q. I am asking you if he talked to you about working conditions. A. I can't recall whether he did or not.

Q. Did he ever talk to you about the length of hours you worked? A. Oh, yes.

Q. While he was working there? A. Yes.

Mr. CARMODY: How many hours did you work in that garage?

The WITNESS: All cleaners and greasers worked

from seven at night until seven in the morning, and I worked nine hours.

Mr. CARMODY: How many days a week?

The WITNESS: Based on seven days, and they gave you a day off every two weeks.

Mr. LYNCH: They work almost as much as lawyers.

Mr. CARMODY: Those were the conditions that a good many mechanics complained to you about as a foreman, did you say?

The WITNESS: Yes.

By Mr. LYNCH:

Q. How many men complained? A. Practically all did.

(221) Q. And did you take those complaints to Mr. Arnold? A. No, I didn't.

Mr. CARMODY: Did you work directly for Mr. Arnold or did you work for somebody else?

The WITNESS: I worked for Mr. Wilsey.

By Mr. CARMODY:

Q. He was your immediate chief? A. Yes.

By Mr. LYNCH:

Q. Did you take those complaints to Mr. Wilsey? A. Yes, sir.

Q. When? A. Ever since I have been there.

Q. Did you ever get any reply from Mr. Wilsey about the matter? A. He couldn't do anything about it.

Q. Did you ever go to Mr. Arnold about it? A. It wasn't my place to go to Mr. Arnold.

Q. Did you ever go to him whether it was your place or not? A. No, sir.

Q. What about your lunch hour at night? How long did you have for your lunch hour? A. One hour.

(222) Q. From what time? A. I took from 12:00 until 1:00, and the other fellows took from 1:00 o'clock until 2:00 o'clock in the morning.

Q. When did Mr. Giffin terminate his employment with the company? A. I just can't recall that. Mr. Miller took his place there at night, and Mr. Giffin was off sick, and I complained about working 12 hours, from seven in the evening until seven in the morning, of being there.

Q. The question is when Mr. Giffin separated from the company.

Mr. CARMODY: I understand he is trying to relate that to something else and get the date.

By Mr. LYNCH:

Q. You ought to do that without giving us all of this mental operation. A. I can't recall that. I just can't recall how long Mr. Miller was there.

Q. How long had Mr. Giffin been away before he came back and started talking union to you?

Mr. BLUM: There has been no testimony to that effect, and you can read the testimony back, that he came back at any time.

Mr. LYNCH: It is exact testimony.

Mr. CARMODY: It is Mr. Arnold's testimony.

(223) Mr. LYNCH: This witness said that Mr. Giffin came back and talked union to him.

The WITNESS: I talked to Mr. Giffin.

Mr. LYNCH: You are not listening to the testimony.

By Mr. LYNCH:

Q. When was it after he left, that he came back and talked union with you? A. He only came once.

Q. How long had he been away? A. I don't know. I just can't recall that.

Q. Approximately? A. I wouldn't have any idea because I don't know just how long Mr. Miller worked there.

Q. Do you think it would be a week or six months? A. Probably that long, six months. I wouldn't say. I don't know.

Mr. CARMODY: Have we anything by which we can refresh his memory?

Mr. LYNCH: I am trying to find out. The records have already been placed in evidence, and he left some time in October, separated from employment, and now if Mr. Harmon's recollection is correct, he reappeared some time the first part of the year.

Is that correct, Mr. Harmon?

Mr. BLUM: He said he didn't know. Don't put (224) words in his mouth. I have notes right here, while you were examining.

The WITNESS: Some time early in February.

By Mr. LYNCH:

Q. Thank you, sir. Early in February. A. Yes.

Q. And he came to the shop one night while you were working there, and the other men were working there, is that correct? A. Yes.

Q. And he then talked to you about working conditions and the union, didn't he? A. Yes, sir.

Q. And for how long a period of time did he talk to you on that occasion? A. About three minutes.

Q. What did he say in those three minutes? A. He asked me what did I think about a union there, and I said it would be a good thing if it was worked out right and I told him I would rather have him talk to the other fellows about it.

Q. Go ahead. A. And Mr. Giffin left right away, him and Mr. Clark.

Q. Mr. Clark was with him on that occasion? A. That is right.

(225) Q. Mr. Clark is the fourth vice-president of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America? A. That is right.

Q. Go ahead. A. They held a meeting over at Mr. Frederick's.

Q. When did you hold a meeting at Mr. Frederick's, with relation to the time when Giffin and Clark first appeared at the garage? A. I don't know the dates, but it was early in February, some time.

Q. Some time within a week or ten days after he talked to you? A. Within a couple of days.

Q. A couple of days after he talked to you? A. Yes.

Q. And Frederick was a day foreman, wasn't he? A. That is right.

Q. And Giffin gave you notice about the meeting over at Mr. Frederick's house? A. Who?

Q. Mr. Giffin, didn't he give you notice? A. No.

Q. How did you know about that meeting? A. I talked to Mr. Clark, and we agreed to that.

(226) Q. When did you talk to Mr. Clark? A. I just can't recall the date.

Q. Was it the same night you talked to Mr. Giffin? A. Yes.

Q. And how long did you talked to Mr. Clark on that night when you came to the garage? A. Just a few minutes.

Q. Well, at that time of the conversation with Mr. Clark, was a date arranged for a meeting at Frederick's house? A. We arranged it then.

Q. Then? A. Yes, sir.

Q. You were to have it a few days thereafter? A. That is right.

Q. Did you talk to the other men in the garage on that occasion? A. To the other men about what?

Q. About the union. A. No, sir.

Q. Did Clark or Giffin? A. Not to my knowing.

Q. Where did you go after they talked to you? A. I went on doing my work.

Q. Did you see them drive away? A. No, I never watched them.

(227) Q. Isn't it a fact that *know* on that very night when they talked to you, they went around and talked to the other men in the garage? A. Not to my knowing.

Q. How many men were at the meeting two or three days thereafter? A. I couldn't tell you that.

Q. Was your night shift there? A. Absolutely, every one of them.

Q. Do you know how they received notice to be there? Did you give them notice? A. Well, no.

Q. Who gave them that notice, if you know? A. I don't know.

Q. Was there any conversation or talk between you

and your men that you were going to go to a meeting? A. Not to my knowing.

Q. You never said a word about it? A. Not to my knowing.

Q. You just appeared at Frederick's house one lunch hour night and these other men appeared there? A. That is right.

Q. And they didn't know that you were going to be there, and they didn't know that you were going to be there? A. No, sir.

(228) Q. And your lunch hour is from twelve to one, and theirs from one to two, and all of you were there at one time? A. No, sir.

Q. What time were you there? A. I was there from twelve to one.

Q. What time were they there? A. One to two.

Q. How long did the meeting last? A. I can't tell you that. I left before my hour was up, and also the men I had in the shop.

Q. They left before their hour was up? A. They were back on their duty.

Q. You checked them in and checked them out very carefully? A. That is right.

Q. So when you got up to the meeting, they weren't there? A. No.

Q. Didn't you say a few moments ago that every one of your men was there at the meeting?

Mr. BLUM: He says that now.

The WITNESS: Sure they went.

By Mr. LYNCH:

Q. You weren't there when they were there? A. They say now they attended that meeting.

(229) Q. How many were there at that first meeting? A. I just can't recall it. I don't know.

Q. Approximately? A. I didn't pay any attention to it. The room was practically full.

Q. How large a room was it? A. The full basement of the house, a six-room house, I reckon.

Q. Did you see as many as twenty members there? A. All of that.

Q. As many as thirty? A. I couldn't say that. I don't know.

Q. Would you say about twenty-five members there? A. I couldn't say.

Q. Give us your best recollection, and you know about how many men were there.

Mr. CARMODY: He said about twenty. I think we are wasting a lot of time. I don't think there is much difference whether it is nineteen or twenty-two or twenty-five.

By Mr. LYNCH:

Q. Did you ever talk to any men in your shop about this union? A. No, not exactly about the union, no.

Q. Did Mr. Clark come back after this first night? A. No.

(230) Q. You saw Mr. Clark at that meeting? A. Yes, sir.

Q. You saw Mr. Giffin there? A. Yes, sir.

Q. They were the ones taking charge of the affair, weren't they? A. Mr. Clark, yes, sir.

Q. And Mr. Giffin, was he putting in his say-so every once in a while? A. No, sir.

Q. Was Mr. Giffin keeping the men in line?

Mr. BLUM: Mr. Examiner, I didn't want to interrupt before, but this line of questioning is not getting us anywhere, and there is certainly no harm to notifying these men that they are going to call a meeting for the purpose of unionization.

I think you have exhausted that line of cross examination.

Mr. LYNCH: Let me be the judge of that.

Mr. BLUM: I want the Examiner to be the judge of that.

Mr. HUGHES: There is an objection.

Mr. CARMODY: It is overruled.

By Mr. LYNCH:

Q. Now, Mr. Harmon, when Mr. Wilsey said to you that he was surprised at your joining the union, what (231) did you say to him? A. I told him that I thought

I was capable of looking out for my own self, and that I would wait and see for my own self.

Q. Whether the union was a good thing or a bad thing, is that correct? A. That is right.

Q. Had you ever been a member of a union before? A. No, sir.

Q. When Mr. Wilsey wanted to go to talk to Mr. Clark, he wanted to talk to him about the union? A. He said that there was some things that he wanted to talk over with him.

Q. And Mr. Clark had left the meeting at that time? A. That is right.

Q. When did you have your next meeting? That was the meeting some time in February, that you just referred to. When was your next meeting? A. March 3rd.

Q. March 3rd? A. Yes.

Q. When was the meeting of March 3rd arranged? A. It was March 3rd.

Q. When was it arranged for? A. I don't know.

(232) Q. Where did you receive notice of that second meeting? A. Well—

Q. At the shop? A. I just can't recall that.

Q. Did you ever receive any mail at your home or official notices of a meeting of the union? A. Someone told me.

Q. Do you know who that someone was? A. No, sir.

Q. And where they told you? A. No, sir.

Q. Was that also at Mr. Frederick's house? A. That is right.

Q. And what time of the day or night was that held? A. I don't know, it was going on when I went there between twelve and one.

Q. It was going on? A. That is right.

Q. And how long did you stay at that meeting? A. Thirty or forty minutes.

Q. And how long did any of your men stay there that you know of? A. They couldn't have stayed an hour because they only left for one hour.

(233) Q. When did they leave? A. From one to two.

Q. And all of them were back on time? You checked them? A. Yes, sir.

Q. Do you have a time clock? A. No, sir.

Q. You never have had one? A. We never have.

Q. And you never had a union there either, have you? A. No.

Q. Is Mr. Giffin the first one that ever approached you relative to a unionization since you have been working there? A. I don't know. I wouldn't say that he was the first one.

Q. Who was the first one? A. There had been several talking about the union, and I can't recall their names.

Q. Had Mr. Clark ever been on there before? A. No, sir.

Q. Had any official of his organization? A. Not to my knowledge.

Q. Now, at the first meeting in February, there was nothing done except just a lot of talk, is that correct? (234) A. February?

Q. Yes. A. Yes, sir.

Q. What was done? A. When I joined, there was twenty-four joined the *nighed* that I joined.

Q. Yes. Did you pay your dues? A. Absolutely.

Q. You have only paid one month's dues, isn't that right, Mr. Harmon?

Mr. BLUM: What was that last question.

Mr. LYNCH: Has he paid one month's dues.

Mr. BLUM: Certainly the internal affairs of the union are no affair of this case.

Mr. CARMODY: Under the law they have a right to make a union, and whether or not the members are paid up is not material here at all, any more than whether the stockholders get their dividends. Neither one is before us.

By Mr. LYNCH:

Mr. Harmon, didn't you know that Mr. Giffin did work during the day? A. He absolutely did not.

Q. Of course, just let me ask you this question: When the work was over, you went home, didn't you? A. Yes, when it was over, sometimes at five o'clock and (235) sometimes at eight in the morning.

Q. You would go home, wouldn't you? A. Probably

Q. And you wouldn't hang around to see what happened there all day, would you? A. Oh, no, I wouldn't stay there all day, no.

Q. You wouldn't stay there any of the day? A. No.

Q. So what Mr. Giffin did during the day, you don't know, do you? A. No, I don't know, but I don't think—

Q. You personally don't know. A. I don't think that any man would work day and night both.

Q. You don't know any lawyers, do you, then Mr. Harmon? A. No.

Q. When did you check up on the number of members, and the number of men who were members of the union?

Mr. BLUM: I object to that form of the question: He said that there were 54 members of the union, but he didn't say that he checked up and if you ask him that he checked up—

The WITNESS: I heard others say that it was 57 or 58, but I can't remember exactly.

By Mr. LYNCH:

Q. You don't know who made that check, do you? (236) A. No.

Q. And when it was made? A. No.

Q. You don't know who said that to you? A. Seventy-four men is a whole lot to talk to you, and remember just what was said, and who said it.

Q. So you actually don't know that there were 75 members.

Mr. BLUM: I object to that.

Mr. LYNCH: I submit it is proper.

Mr. CARMODY: He can answer if he knows.

The WITNESS: Well, I judge that there were that many, because there was that many applications.

By Mr. LYNCH:

Q. Did you see them and count them? A. Absolutely.

Q. Where did you see them and count them? A. Mr. Frederick's home.

Q. Who else was counting them with you? A. Mr. Frederick.

Q. How about Mr. Giffin? A. No, sir.

Q. Mr. Clark? A. No, sir.

Q. By the way, what is Mr. Giffin's first name? A. I do not know.

(237) Q. How long did he work for you, and you don't know his first name? A. No, sir; I had so many, I didn't think it was necessary to remember his first name.

Q. Mr. Harmon, during these eight and a half years you worked with the company there, you got along with the company all right, didn't you, Mr. England, and Mr. Wilsey? A. I never had any trouble, no more than they called me in on the mat now and then for little things that occurred but it never amounted to anything.

Q. And the other men that worked under you, they got along with you all right? A. Absolutely.

Q. And they got along with Mr. Wilsey all right? A. So far as I know.

Q. And that also applied to the day men, didn't it, that you knew around there? You knew Frederick, and the other mechanics? A. Yes.

Q. They all got along all right? A. So far as I know.

Q. There was no strikes there or attempted walk-outs? A. None whatsoever.

Q. Or burning the buses, or running them over the (238) hills, were there? A. Not to my knowing.

Q. And there was no concerted effort on the night shift or the day shift, so far as you know, to have pay raised, or conditions changed, or hours changed? A. Well, Mr. Wilsey said he was going to arrange, about the 1st of March, he told me this, that he was going to arrange to give the cleaners less hours, but he never did up until he fired me on March 6th.

Q. Didn't you have more than two mechanics in the garage at night in 1935 and 1936? A. When?

Q. In 1935 and 1936? A. More than one?

Q. More than two. A. No, sir, not to do repair work. The last two nights the 4th and 5th, I had two mechanics, three with myself, but never did I have more than two of us there to do mechanical work, from 1927 up until 1936.

We had greasers, and washers, and service men.

Q. How many greasers did you have at night? A. Two.

Q. And how many washers? A. Three, and one service man.

Q. What do you mean, a "service man"—a man to go out on the road? A. To change tires, oil buses, and (239) drain out tanks, and check oil in motors, and keep tires inflated, and line them up on the road,—forty-eight of them.

Q. And the other three men would look after the mechanical work, two mechanics and yourself? A. One mechanic and myself. I had Mr. Giffin, and Mr. Miller took his place, and between the 4th and 5th, I had two mechanics, a new fellow just hired, put there with me, and they took my regular man and put him on day work, Mr. McCawley. Mr. Wilsey gave me Mr. McCawley for two days before he gave me these two extra men that he hired, and put two green men on there with me for two nights.

Q. Mr. Giffin wasn't very much of a mechanic?

Mr. BLUM: I object to that.

Mr. CARMODY: Objection sustained. What kind of mechanic was Mr. Giffin?

The WITNESS: A general repair man.

By Mr. CARMODY:

Q. Was he an efficient mechanic, or was he as good a mechanic as the average mechanic that you had, or was he not? A. Absolutely.

Q. He was? A. Absolutely. You don't learn buses in one day.

Q. And he knew bus mechanics, did he? A. He worked on heavy jobs, yes.

(240) Q. Had he worked on buses? A. He knew air brakes, and how to go about servicing a bus, and getting a bus ready for the road, checking the strainers and brakes, and stuff of that sort.

Of course, I show them all as they come.

By Mr. LYNCH:

Q. You showed Giffin, too? A. Yes, I show all of them.

Q. When was the last time that there was ever any talk between you and Mr. Wilsey about the inefficient service of the buses? A. It has been quite a while.

Q. How long ago, the last couple of months? A. All of that, if not more.

Q. Well, during the latter part of February, didn't he talk to you about the large number of service calls that you were getting on the road? A. No.

Q. This repair work that you spoke of, that was merely cutting a door through the garage? A. They cut two doors, on the back end of the garage. Two double doors, yes.

Q. Which let out to a lot? A. Yes, sir.

Q. And how far away were those doors from the (241) gas tank? A. From the gas tank?

Q. Yes. A. Four feet from the gas tank itself, and not from the pump.

Q. Where is the pump? A. That is sitting within two feet of the wall.

Q. And did they knock the pump down while they were putting the doors in? A. They put the pump up while they were tearing the side out, to put the doors in.

Q. In other words, when they tore the side of the garage out and put doors there in place of a brick wall, they also made an examination to install a pump and a gas tank? A. That is right.

Q. Did you see that? That was done during the day? A. Yes.

Q. And the men weren't working there at night? A. No.

Q. All right; and do you say now that dirt and sand got in the gas tanks and gas pump? A. Absolutely, from that one new tank that they put in.

Q. Was that the one we just spoke about which was four feet from the wall? A. That is right.

(242) Q. And how did the sand and dirt get in that gas tank? A. I couldn't tell you that, unless they pushed the pipes into the pails of sand they had there and put them up with the sand in the pipes.

Q. Did you make any investigation to determine what was causing this dirt and sand to get in this gas tank there? A. No.

Q. That you were servicing the buses with? A. I didn't think it was necessary because we have always had that trouble, with a certain amount of sand and dirt

and slush and stuff in the gas lines, and in the fuel pump strainers.

Q. When you had this new tank put in and it did the same, didn't you think it was your duty to see why it was going on, and see if it could be remedied? A. I had quite a few service calls on this 127 bus, and it seemed like that bus got all of the sand from somewhere in the gas tanks, and there was sand in the gas, and I don't know where it came from unless it did come from the pumps.

Q. Who was driving bus 127? A. I just couldn't recall that. We keep it on that run, and if we had a service call, we put it out. Anybody used it that could use a small bus on their run.

Q. When was your next meeting after March 3rd?
(243) A. Well, I didn't attend any.

Q. You didn't attend any after March 3? A. No, sir.

Q. You don't know whether they have had a meeting? A. I don't know.

Mr. LYNCH: It may tend to show whether he is still a member of the union.

Mr. BLUM: What difference does it make?

Mr. LYNCH: I submit, may it please the Board, if the union has been dissolved by acclamation of the members, then there is no union.

Mr. BLUM: But there is no evidence that the union has been dissolved on either side. Due to the fact that he is not a member, does it say that the union is dissolved? I submit that that is an improper question.

Mr. HUGHES: It proves membership by him.

Mr. CARMODY: Are we going to put on the witness stand every *employ* of this company, to find out whether or not he is a member of the union? I mean, is that the intent here?

Mr. LYNCH: I don't know what the intent of the labor union is to do, but I submit this, however, to the Chairman.

Mr. CARMODY: I am anxious to know how long a very simple matter like this must go on in order to de-
(244) termine the very simple facts, it appears to me, from what I have heard at present.

Mr. LYNCH: I must say that Mr. Hughes and I, I suppose we may say, we admit that we are a little green about these matters, but it does occur to me, however, that when a union comes in here and makes charges of unfairness, that a mere handfull, and a mere small minority of workers cannot control the great majority of workers.

Mr. CARMODY: Of course under the Act the employer has no right to discharge a single person for belonging to a union, so that is really what we are here for.

Mr. LYNCH: That is true, but let us say for instance there are one hundred persons, and when four are discharged, and we can't form a union, and say we have a union, and we have these men's applications and so forth, and ten more, and we demand everything; now, that certainly cannot be the intent of the law.

Mr. CARMODY: The employer might not grant it, but you can do all of that. If one man wants to join a union, he has a perfect right to do it, and if four men want to, they have a perfect right, and if four men want to go to the union, and if four men want to go to the employer, they have a right to do that, but the employer doesn't have to go along with them. But in the meantime, he doesn't have the right to put the fear of God in
(245) them with respect to their rights.

Mr. LYNCH: What is the process to determine whether the other members, or the other workmen, are members of the union or not?

Mr. CARMODY: Well, as a matter of fact, in some cases you don't have to determine it at all. They may not care to reveal whether or not they are. If the question is a question of whether or not the employer shall bargain with these people on the basis of their representing a majority, then you have several methods by which that can be determined. One is signed authoriza-

tions on the part of those men that they wish so and so, or such and such an organization, to bargain for them with the employer, of if that isn't satisfactory to everybody, then you may have an election, and the election can be held under the supervision of the Board, and the election would determine whether or not these men have a majority, and if they don't have, then under the law the employer is not required to deal with them as representing the majority of the employees.

Mr. LYNCH: Well—

Mr. CARMODY: If you will tell me what you are trying to prove, I will be able to help.

Mr. LYNCH: Will you tell me whether or not the Board is interested in hearing testimony along this line, as to whether or not this labor union is truly representa-
(246) tive and a truly representative body of the workmen of that organization?

Mr. CARMODY: We are not interested in that here. We are interested to know that these men have undertaken to join a labor organization, and as a result of that, the employer has or has not discharged them. That is really what we are interested in.

Now, if you can prove here, and I suspect that that is what you have set out to do, that none of these men were discharged because of union affiliations, or his activity, or the fact that he went to these meetings on his lunch hour, or talked to other union men about it, then that is one thing, but the business of finding out whether or not each and every one of these men is a member of the union at that time I think is not pertinent here. At least I don't know that it is.

I don't find it in the complaint.

I think that it might be well to introduce testimony as to the fact of whether or not this is a labor organization.

Mr. LYNCH: That is what we had in mind. As I understand it, of course, Mr. Examiner, a labor organization, just like any other organization, is representing either a majority or all or a substantial part. Now, if the information we have is correct from these people, it

(247) wasn't a case here of the employer attempting to restrain, but it was a case of high pressure, and unfair tactics on the part of the people who pulled these people into an organization, and if those facts are shown here, and if it is later shown that these people upon reflection and upon discussion not with the employer, but with other persons, have come to a different conclusion about the matter, I want to know whether the Board is interested in hearing that or not.

Mr. BLUM: I want to move that Mr. Lynch's remarks be stricken from the record, because they are purely argumentative.

Mr. HUGHES: We are asking for an outline of testimony.

Mr. CARMODY: They may remain in the record. I think Mr. Lynch says he and his associate are green on these labor matters. The whole line of argument indicates that, but I think that it is part of our business here to clear up some of these things, and to give these men some knowledge of what the Act is intended to do.

The Act itself is intended to protect employees in their right to organize, and this isn't something new. I mean, in the transportation industry, a similar Act has been in effect for many years, and nobody needs to be ignorant in the transportation industry of the rights of men to join labor unions. It is a very widely known fact.

It is widely known, the National Mediation Board (248) deals with these problems all of the time, and has for several years That is under an Act that was passed first in 1926, and revised in 1934.

The difference between these Acts is that this particular Act is based on the Federal Trade Commission Act of cease and desist, and the other is based on the theory of mediation, and that is really the difference.

Now, you have a right to ask this man whether he belongs to the union or not, and you have a right to ask this man whether he is interested in this complaint, and whether or not he was discharged because of his union activities, and you have a perfect right to prove that none of these men were discharged because of his con-

nection with the union, and you have a perfect right to show, if you can, that the employer had no interest in whether or not these men belonged to a trade union.

The fact that none of them ever belonged to a trade union before is not material here at all. Some of them may never have belonged to a trade union, and some of them might have belonged to one twenty years ago, in some other organization, in some other craft, and that is not material here.

The question here is whether or not when these men undertook to develop a trade union, or engage in the trade union practices, they were stopped from it, and from their employment, by the employer, who did not (249) wish to deal with union men or have any union men on the property that he had to deal with collectively.

So now, with that explanation, and counsel's argument, which I think properly belongs in the record, you might proceed. I am concerned about the fact that we are going to run about two witnesses a day here.

Mr. LYNCH: I am going to be a lot quicker on some of these others.

Mr. CARMODY: We might recess for ten minutes, say.

(Whereupon a ten minute recess was had.)

Mr. CARMODY: Are we ready to resume?

Mr. LYNCH: Yes.

By Mr. LYNCH:

Q. Mr. Harmon, since you left the stand, did you talk to Mr. Frederick about your testimony? A. No, sir.

Q. You did talk to him? A. Yes, I said something to Mr. Frederick.

Q. Now, Mr. Harmon, on the occasion when you met Mr. Arnold by accident this night when Mr. Wilsey and you were going up to see Mr. Clark—that is correct, isn't it?

Mr. BLUM: At that point—I don't object to the

answer, but I do object to the form of question, because there is no statement that he met him by accident.

The WITNESS: I couldn't say whether it was or not.

(250) Mr. CARMODY: Let us clear it up this way: Was it customary for Mr. Arnold to come in the garage about that time of night?

The WITNESS: He was there all night.

By Mr. CARMODY:

Q. Mr. Leon Arnold? A. Every night.

Q. Every night? A. No, sir.

Q. Every night? A. For the last three or four nights prior to that.

Mr. BLUM: We are talking about that night when you met him when you were going to the meeting.

The WITNESS: He probably went around there and he happened to be there.

By Mr. LYNCH:

Q. Were you walking or driving? A. We were walking, but he was driving.

Q. And he stopped and talked with you? A. Talked to Mr. Wilsey.

Q. And did he say anything to you at all? A. No, sir. He spoke to me.

Q. What did he say? A. He said "hello".

Q. And he spoke to Mr. Wilsey, and you overheard (251) the conversation, is that right? A. I was standing right there within four feet of him.

Q. And when he spoke to Mr. Wilsey, you didn't know what he meant by what he said, did you? A. I certainly did.

Q. He merely made a statement, and that is all, and he didn't make any explanation to you of what his statement was? A. He said to Mr. Wilsey,—Mr. Wilsey said I was going over to see this fellow Clark, and Mr. Arnold said, "I didn't ever have anything going on like this that is going on, and I am not going to recognize the union", he said, "You can put that in your damn pipe and smoke it".

Q. He didn't say anything about burning the buses? A. He said that he was not going to recognize the union, but would burn the buses.

Q. You didn't know what Mr. Arnold meant by what he said, did you? A. I certainly did.

Q. He said he wasn't going to recognize the union? A. That is right.

Q. And that is all you know about it? A. That is right.

Q. What time of the night was that? A. It was after two o'clock. I just can't remember the time.

(252) Q. What was the date? A. I don't know how long—it was the night of the 3rd—that must have been the 4th.

Q. And Mr. Wilsey and you and Mr. Arnold were the only ones present? A. That is right.

Q. Did you repeat that to anyone else? A. Not to my knowing.

Q. Did you and Mr. Wilsey attempt to go up to see Mr. Clark on that night? A. Yes, sir.

Q. Did you see Mr. Clark? A. No, sir.

Q. Did you see Mr. Clark the next day? A. No, sir.

Q. Did you tell Mr. Clark that Mr. Wilsey would like to see him and talk to him about this matter? A. I just can't recall whether I did or not.

Q. Mr. Clark was the guiding spirit?

Mr. BLUM: I object to that.

Mr. LYNCH: Wasn't he? I want to show that after all his boss would like to see him and talk with him and he doesn't know where he could find him.

Mr. BLUM: There was no statement of that he (253) didn't know where he could find him.

Mr. LYNCH: He saw these people, and then went away in the car and appears again at the meeting.

Mr. CARMODY: As I understand it, Mr. Clark was an organizer, and perhaps he had some conversation with the men who joined the union, or the prospective members of the union, and Mr. Harmon knew Mr. Clark, and I think it is all right to ask of Mr. Harmon if he saw Mr. Clark, and Mr. Clark was not his boss, and I think that is an unfair statement.

Mr. LYNCH: Mr. Wilsey was his boss.

Mr. CARMODY: Mr. Wilsey asked Mr. Harmon if he would arrange to see Mr. Clark.

Mr. BLUM: There is no testimony of that type. The only statement in evidence was on the night of the meeting of the union, Mr. Wilsey came to the garage, and he asked Mr. Harmon to take him to the meeting so he could see Mr. Clark on that occasion, and when they separated there was no statement made that Mr. Wilsey had wanted to make a future engagement or attempted to make a future engagement, so I maintain that that is not right.

Mr. CARMODY: I thought that they were working on that night when they met Mr. Arnold, when they were on the way to see Mr. Clark.

Mr. BLUM: Mr. Lynch's question was, did he make (254) a future engagement.

By Mr. LYNCH:

Q. Did you tell Mr. Clark that Mr. Wilsey had tried to get in touch with him? A. I probably did.

Q. Do you know what reply Mr. Clark made? A. I don't know.

Mr. LYNCH: That clears up the whole matter.

May I, in fairness to the witness, may it please the Board, ask the witness a couple of questions about a matter which has previously been gone over, but which I want to be sure about, and let the witness, if he wants to,—possibly, in view of what has gone before, he may be able to answer the question.

By Mr. LYNCH:

Q. With regard to Giffin, I want you to tell the Board whether or not you can recall that there was at least on some occasions during his term of employment there, during the period when he was actually working in the place, that some mention was made about a union? A. No, sir, none whatsoever.

Q. Did you say in your examination awhile ago, however, that there was some talk about the working

conditions? A. Always, not only Mr. Giffin, by everyone.

Q. I am talking about Mr. Giffin. Did you discuss (255) the length of hours?

Mr. CARMODY: He said not only Mr. Giffin, but others. It is an inclusive answer.

By Mr. LYNCH:

Q. Was there anything about the hours you were working, with Mr. Giffin? A. All of them complained about it.

Q. Did you understand the question? I said Mr. Giffin, about the hours that you were working. Did you understand that question? A. He complained, the same as others.

Q. All right, sir. Did he complain frequently to you, or in the presence of other people, or just to you? A. Just to me.

Q. And was that a matter of discussion on several occasions during the time that Mr. Giffin was employed there? A. I just can't recall that. I reckon more than one time.

Q. Did you ask Mr. Giffin whether he was, when he came back in February to see you, whether or not he had come there to work to find out about the conditions of the shop, so that he could come back later and unionize it?

Mr. BLUM: I object to that. That has been asked before.

Mr. LYNCH: That hasn't been asked before.

(256) Mr. CARMODY: He may answer.

Answer that question yes or no.

The WITNESS: No.

Mr. LYNCH: That is all.

By Mr. BLUM:

Q. Now, Mr. Harmon, just a few other questions. Was there ever any rule of the shop that the men were

not permitted to talk to each other while they were employed? A. Not to my knowing.

Q. Was there any rule prohibiting carrying messages from one to another? A. Not to my knowing.

Q. You were in charge, weren't you, at night? A. No, sir.

Q. Did you ever receive any instructions from Mr. England or Mr. Wilsey to prevent discussions among the men? A. Only from Mr. Wilsey during working time, he didn't want his men to huddle, and he wanted them scattered out and kept on the job.

Q. But there wasn't any rule that one man couldn't approach another one and then leave for his work, was there? A. None whatsoever.

Q. Just one other question, Mr. Harmon. You testified on cross examination in response to a question from Mr. Lynch, that for eight and a half years your (257) service there was satisfactory, and that your relationship was pleasant, and that that had continued up until the time you were fired; isn't that true? A. Yes.

Q. Was there any reason, then, for your being fired? A. None whatever.

Mr. BLUM: That is all.

(Witness excused.)

Mr. BLUM: I would like to call Mr. Hall.

Whereupon HERBERT MILTON HALL was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your full name? A. Herbert Milton Hall.

Q. Were you in the employ of the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. For how many years? A. Two years and five months, to be exact.

Q. In what capacity were you employed? A. Driver.

(258) Q. Driver of a bus? A. Yes, sir.

Q. Were you a member of local division No. 1079,

Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America? A. Yes, sir.

Q. When did you become a member of that organization? A. About the 1st of February; I don't know exactly the exact date, but the secretary has those.

Q. Were you an officer of the organization? A. No, sir.

Q. Do you have any of the records of the organization? A. No, sir.

Q. Now, were you discharged by the Washington, Virginia and Maryland Coach Company recently? A. On the 4th of March.

Q. 4th of March? A. Yes.

Q. Will you explain the circumstances of that discharge, Mr. Hall? A. Yes, sir. I had worked half of my run on the 4th of March and was called in to the office when I was due to report at five, and I was called in the office at 2:55 and it was on Wednesday, the 4th, (259) and I walked in the office, and Mr. England told me that my services were not longer required, and I asked him why, and he didn't give me any answer, and I said, that isn't a logical answer, and I never was discharged off a job in my life that I wasn't given a reason, and he said he had plenty of reasons, and Mr. Joseph Arnold, the present vice-president of the company, was sitting on the other side, and he said, "Hall, you are the first person that asked that question", and I said, "I still would like to know" and Mr. England said, "I am not going to stay around here at night. You go home and come back; and I said, "All right, thanks", and so I went home, and got my punch and things that I had to turn in for him, and I came back in again, and he said, "I will pay you" and so when he paid me I asked him the same question as before, and he said, "If you wasn't so damn *dum*, you would know why I am firing you; I am firing you for the same reason I am firing all of the rest of them."

Q. Who were fired on the same day you were fired? A. William West was one.

Q. Was he a member of the same union? A. Yes, sir, and William Crissman was another.

Q. William Crissman? A. And Stanley Smith.

Q. Yes. A. And a boy by the name of Stanley, and (260) I don't know his first name, and another one by the name of Magaha.

Q. Now, were all of these members of the same union with you? A. Yes, sir.

Q. Now, on a previous occasion, or any previous occasion, did you make any complaints to any officials of the company as to the working conditions, and hours and wages? A. No, sir.

Q. Had there ever been any complaints about your work, in the two years and five months you worked there? A. Yes, I should say several unjust complaints, sir.

Q. When was the last one made? A. Before Christmas.

Mr. LYNCH: Complaints by the drivers or by the company?

The WITNESS: Several.

By Mr. BLUM:

Q. When was the last one? A. Before Christmas.

Q. And after that last complaint, did you continue to work? A. Yes, sir.

Q. Was any penalty placed upon you for that complaint? A. No, sir.

Q. What was the nature of that complaint? A. I (261) had some trouble about the size of the bus that I was working on my run. I had a small bus, and of course during the Christmas rush I was hauling more people than ordinarily and quite a considerable more mail, and I didn't have seat room for the people that did ride, and I should say one trip in the evening to make it as best as I could and they kept riding my neck so bad, and so I said, "The only thing that I can do is go to Mr. England and see if they can't give you a bigger bus, and there is nothing that I can do, and so they did, and so consequently, I was at the terminal one evening, and Mr. Kaylor was the supervisor, and he said, "Take 108 tomorrow evening" and I said, "For what? That is one of those old 25-passenger buses", and I said, "I can't use that on this run" and he said, "Well, you will take that or else".

Q. Why couldn't you use it? A. Because it would only seat 25 people and had no emergency door, and the bus that I was using, to seat 23 people, and to have used that bus I would have had to pile the mail on the

seats in the front so I could get it out without dragging it over the top of these people's heads who were in the bus and I thought he would realize that, so during the course of the conversation with him a particular friend of mine was on the bus that day, I told him that Mr. Arnold—

(262) Mr. LYNCH: I didn't get that.

The WITNESS: During the course of the conversation with a particular friend of mine while the bus was standing still, I said if Mr. Arnold really knew the conditions around here he would pull his hair out, or something of that sort—that is as near as I can remember, and I said, "There is a man that is in authority, in charge up there of the drivers to a certain extent, that takes his large buses and works them on the light trippers", and I said, "Consequently he is going to impose on me, and I have got to like it".

"Now, if Mr. England went to him and gave him a direct order he would shake and shiver in his shoes, and still he takes his spite out on me," so that was what I was called in the office for. I don't know how many days.

That was the last time that I was called in there, this checker on the bus that night, I imagine, he was the one that reported that.

Q. What was the conversation between you and Mr. Arnold on that conversation? A. He had me in there, and he charged me with those things, and I denied it until I found out he had it too straight, and after I found out that it wasn't Kaylor, I admitted that.

Mr. Arnold told me that he was the instigator, and (263) this line hadn't made any money for him, and he was losing money every day up there, and he didn't see why I should get people riding his neck, so I told him that after people rode my neck there wasn't anything else for me to do, to get them off me, and so he told me that up to that time your record had been pretty good.

Q. He told you that it had been pretty good? A. Yes, sir, he told me it had been pretty good, and then I don't remember just exactly what did happen.

Q. Were you sent back to work? A. That same day, yes, sir.

Q. You weren't penalized in any way? A. No, sir.

Q. And you weren't reprimanded in any way? A. No, sir, only I gave you the full conversation.

Q. At the time, was there any labor organization work *oing* on? A. Absolutely none, no, sir.

Mr. HUGHES: Did you get the date as to when that happened?

Mr. BLUM: He said it was before Christmas, and that was the statement you made, wasn't it?

The WITNESS: Yes.

Mr. CARMODY: Apparently you can get a little closer than that, because you talked about heavy shopping traf-
(264) fic and heavier mail, and would that bring it within a week of Christmas, or two weeks before Christmas.

The WITNESS: Two weeks before Christmas.

Mr. BLUM: After Thanksgiving?

The WITNESS: Yes, quite a bit. It was in December.

By Mr. BLUM:

Q. Since that time, was your record with the company all right? A. As far as I know, yes.

Q. Did you have any complaints or accidents? A. No, sir.

Q. Of any nature at all? A. No, sir.

Q. Did the company have any reason to fire you on the day that you were fired? A. No, sir, not to my knowledge.

Q. Did you have any reason in your own mind as to why you were fired? A. No, sir.

Mr. BLUM: That is all.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. Did you ever get a copy of the by-laws? A. Did I ever get a copy of them?

(265) Q. Yes.

Mr. BLUM: I object to that question, going into the question of whether or not a union existed or not, and this man is certainly not in a position to say so.

Mr. CARMODY: That is not material.

Mr. LYNCH: May I have an exception?

Mr. CARMODY: Yes. He might choose to belong to a union without reading the by-laws, and he might *chose* to nominate somebody to represent him in his dealings with the company without even belonging to the union, and he has that right, so it is immaterial here whether he read the by-laws.

By Mr. LYNCH:

Q. You said that you joined the union on the 1st of February? A. No, sir, I did not.

Q. You didn't say that? A. No, sir.

Mr. BLUM: He said around the 1st of February.

By Mr. LYNCH:

Q. Was it the latter part of January or in February? A. February.

Q. Would you say between the 1st and 15th? A. Yes, between the 1st and the 15th.

Q. Do you want to put it more liberally than I have put it there, Mr. Hall? A. That is all right.

(266) Q. And at the time when you joined, where was the meeting? A. Mr. Frederick's house.

Q. And you had talked about this matter before, hadn't you? A. Not up until the day of the meeting.

Q. And the day of the meeting you talked with whom? A. I would rather not answer.

Mr. LYNCH: I think that we are entitled to the answer.

Mr. CARMODY: That is all right.

The WITNESS: I talked to George Burch, one of the shop mechanics.

Q. And did you talk to Giffin? A. No, sir.

Q. You saw Giffin at the meeting, didn't you? A. I don't remember seeing him the night I was at the meeting, the first night.

Q. Did you see Giffin before that night? A. No, sir.

Q. Did you talk with Mr. Clark at that meeting that night? A. Yes.

Q. Did you talk with him? A. Yes, sir.

Q. How many were there? A. Between twenty and
(267) twenty-five; I should say about twenty-four, as near as I can recollect.

Q. When was your next meeting? A. The next meeting was just a few days after, and I don't remember the exact date. I didn't attend that meeting.

Q. When was the next meeting? A. There wasn't any more, a far as I know.

Q. Where did you talk to Burch on that first occasion? A. On the sidewalk, in front of the garage.

Q. During the day? A. Yes, sir.

Q. From that time on, there were conferences held in the men's room, weren't there? A. Not to my knowledge, sir, no, sir.

Q. In that room where the bus drivers stayed, at the plant terminal? A. Not to my knowledge.

Q. Didn't you see men over there talking in huddles? A. No, sir.

Mr. BLUM: What is the relevancy of that?

Mr. CARMODY: That is what the room is there for, isn't it? I assume that a bus terminal, where drivers come in and are given a rest room, they may talk there.

By Mr. LYNCH:

(268) Q. You didn't join in that conversation with any of them? A. No, sir, because I didn't come there in time to join in any conversations. I just came there a few minutes before my run went out.

Mr. CARMODY: Did you have a regular run?

The WITNESS: Yes, sir.

By Mr. CARMODY:

Q. What was your schedule? A. I was due to report at the garage at six-thirty in the morning.

Q. Where is the garage? A. Clarendon.

Q. What time in the morning? A. Six-thirty.

Q. And then where did you go? A. I went from the garage to the Clarendon post office, and collected my mail and went from there to McLean with my mail, and then into Lewinsville and left there at a quarter of eight, and into Washington, and to the Washington terminal.

Q. What time did you get there? A. I was due in there about 8:25.

Q. How long were you in the terminal? A. I wasn't allowed to stay there over five minutes.

(269) Mr. LYNCH: The Public Utilities Commission wouldn't permit them, and they have to stay there fifteen or twenty minutes, and the Public Utilities Commission made them stop there and get out in five minutes.

By Mr. CARMODY:

Q. How much time did you have for meetings? A. I left the terminal and went back to the Benjamin Franklin post office, and delivered the mail, and stayed there until a few minutes before nine o'clock, so that I could leave the terminal at nine o'clock, and I was due to leave Fairfax Court House at 10:58, and due at 12th Street, back at the terminal—that was 9:58, at Fairfax Court House, and back to the terminal at 10:58. I was due in the garage at 11:22.

Q. How long were you in the garage? A. About eight minutes. I used to ride the 11:30 bus away from there.

Q. When did you take another trip? A. I was due at the garage at three o'clock.

Q. And then where did you go? A. To 12th Street, 691 12th, and Lewinsville and back to 12th Street, and from 12th Street to Cherrydale, and Glebe Road and Lee Highway, and back to the post office, Benjamin Franklin post office.

Q. With mail? A. To get mail, to collect mail; and (270) then to the terminal, and from the terminal to Fairfax Court House, and I left Fairfax at 7:15, and due to leave the post office at 8:15 at night.

Q. You started up at 6:30 in the morning? A. Yes, sir.

Q. And what time did you get through at night? A. 8:35 at the garage.

Q. And where were these huddle meetings, in the drivers' rest room, or rest room that you were inquiring about? A. Well, if any such things as that did happen, they have one big table, and some men come in there, before their runs, and they stand around and talk to one another, and as I say, I never got in there at any time except just before my run went out and I got my traps and went to work.

Q. Did you work five days a week? A. Seven days a week.

Q. And you got a day off how often? A. Never, unless I took it on my own accord.

Q. You remember your December work—how many days off did you have during the month of December? A. I don't really believe that I took any time off at all during the month of December. If it was, it was on a Sunday, maybe one or two Sundays that I took off myself.

Q. Did you work Christmas day? A. Yes, sir,—did (271) I or did I not? I just can't remember. I worked a half a day Christmas, sir. I worked up until 12:20—you see the Sunday and holiday schedules were changed a little.

Q. Now, we have your schedule from 6:30 in the morning until 8:35 at night. Go ahead with the question of where they had their meetings, and discussions.

Mr. HUGHES: Just on that subject, Mr. Examiner, could I ask him just one question?

That schedule from 6:30 in the morning until 8:30 at night, that was not continuous work, was it? Did you have some time off during the day? A. From 11:22 until 3:00 o'clock.

Mr. HUGHES: So that the net—and then how much time did you have for lunch?

The WITNESS: No time at all for meal trip.

Mr. HUGHES: You had your lunch between 11:22, and the time you went back to work?

The WITNESS: Yes.

By Mr. LYNCH:

Q. And when you went back there, you would be getting your traps there, and you would see the other drivers, wouldn't you? A. Oh, yes, there were always quite a few standing around there, and the other crews would be going to work. There would be quite a few around.

(272) Q. And during these two years, were you driving all of the time? A. Was I driving all of the time?

Q. Were you always a driver? A. I was employed as a driver all of that time.

Q. That is what I mean. A. Yes, sir.

Q. And did you seek employment anywhere else? A. No, sir.

Q. Do you live over in the county? A. By Mr. Arnold's request.

Q. Do you find living over there just as cheap as in Washington? A. Absolutely, no.

Mr. CARMODY: What do you mean by that?

The WITNESS: Some time ago, I think it was a matter of a few months ago, Mr. Arnold requested that every driver live in the county. He almost made it compulsory. He did set a time, that every driver had to move over in the county.

By Mr. CARMODY:

Q. Did he tell you why? A. Yes, sir.

Q. What did he tell you was the reason?

Mr. LYNCH: We object to this as being entirely ir-
(273) relevant.

Mr. CARMODY: It may have a bearing upon it.

Mr. BLUM: It could be let in subject to striking out.

Mr. CARMODY: I would like to know what he told you, and not what you think he thought, but what he told you was the reason why the drivers had to live in the county.

The WITNESS: He told us in the open meeting over there that he would like, and insisted, that each and every driver or employee of the company would live in the State of Virginia so that he could vote in the next coming Presidential election, and so that we could all get together over there and form what he called a little Democratic Club so that we could go down to Arlington County Court House and wouldn't be domineered over and interfered with, and we could see that we controlled this many votes, and we would like to get this down, and he said that it would benefit me, and would benefit you, and he said if you get locked up for speeding, they won't be so particular. He wanted you over here.

Mr. CARMODY: Strike it out. It has no bearing upon this particular case here. It will be stricken out of the record, all of that.

By Mr. LYNCH:

Q. Arlington County is Democratic? A. Yes.

Mr. CARMODY: That is off the record.

By Mr. LYNCH:

(274) Q. Who is Mr. Kaylor? A. His official title would be day cashier there, but he also acts in the capacity of a starter, or supervisor of buses in the morning and evening at different times.

Q. And, Mr. Hall, this time when this matter was brought to your attention about the actions on the bus, did I understand you to say that you decided at first, until you knew that he had you right, and then you admitted it? A. Certain points of it, yes, sir.

Q. You say certain points of it? A. Yes, sir.

Q. Well, did you deny that you had made these statements to this party? A. No, sir, I didn't.

Q. What points did you deny until you knew that he had you right? A. The conversation otherwise in there, I gave, I can't exactly tell you just how it did begin, but some things I did deny, and then when this was told to me, just like I have told you, I admitted that it was the truth.

Q. You denied it, and said it didn't happen, until you knew that Mr. Arnold know it did happen? A. I

didn't deny that, but the statements I made to you, I admitted was mine, and I had made them, sir.

Q. What part did you deny to him, that is what I (275) want to know, until you knew that he had you right, as you termed it? A. I can't remember very well, sir, it has been too far back.

Q. You can't remember that? A. No, sir. I can remember that, because I know that I said that.

Q. What part did you mean when you said that you denied it, what did you mean by that? A. I don't know the statement that was made before that. I can't remember, it has been too far back.

Q. Too far back in your testimony? A. Too far back.

Q. I mean in answer to Mr. Blum's question. I mean in his examination, when you testified in response to his questions. You referred to denying it. A. I did not deny the statements that I made to you, no, sir. That is, not the statements that I made to you, I admitted that.

Q. You denied the statements that you were supposed to have made to this man, didn't you, to Mr. Arnold? A. The statements that I was supposed to have made to that man was the same as I gave you there, sir.

Q. But you denied them at first? A. Not those statements there, I didn't.

(276) Q. What statements did you deny? A. I don't remember, I said. It has been too long ago. I have forgotten.

Mr. CARMODY: Now let us see if we can't get this straightened out. As I understand it, you had had an argument with the starter, and you had also made some comment about the starter, and about the bus service, in the presence of somebody on the bus, and either the starter or the person in whose presence you made the statement on the bus, turned the statement or statements over to Mr. Arnold, and then Mr. Arnold called you in, and charged you with having made these statements, and probably indicated that you were not loyal when you were criticizing the service that was paying you, and then you denied having made the statements.

You said it here, in your direct testimony, that you denied it until you saw that Mr. Arnold had got the story

straight, and then you admitted that you had made those statements; is that what happened?

The WITNESS: Yes, I admitted it after I saw that the statements were straight.

Mr. CARMODY: But you first denied having made them, but when you saw that he had them so straight that you could not successfully deny them, then you admitted that you had made them.

The WITNESS: After I saw that they were straight.

(277) Mr. CARMODY: Does that satisfy your inquiry?

Mr. LYNCH: That is right.

By Mr. HUGHES:

Q. Mr. Hall, you heard Mr. Harmon's testimony, didn't you? A. Yes, sir.

Q. And you heard him say that he enjoyed friendly relations with the company, didn't you? A. Yes, sir.

Q. And other employees, over a period of time? A. Yes, sir.

Q. And you believe that too, don't you? A. Yes, sir.

Mr. HUGHES: That is all.

By Mr. BLUM:

Q. And therefore at the time of your discharge, was there any reason in your action for the company that prompted the discharge? A. No, sir.

Mr. BLUM: That is all.

(Witness Excused.)

Mr. BLUM: I would like to call Mr. Frederick.

Whereupon THEODORE WILLIAM FREDERICK was called as a witness on behalf of the Board, (278) and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Now, give your full name. A. Theodore William Frederick.

Q. Now, Mr. Frederick, did you state your full name? A. Yes, sir.

Q. Were you employed by the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. In what capacity? A. Working foreman in the day time.

Q. For how long a period of time had you been there? A. Seven and a half years, working foreman five years.

Q. Now, were you on night duty or day duty? A. Day duty.

Q. Was day duty a reward with the company? A. You had to work whatever shift you worked, whether it was day or night.

Q. Were you a member of the local division No. 1079 of the union? A. I was.

Q. Were you an officer of that union? A. Yes, sir.

Q. What was your office? A. Recording secretary, (279) and a charter member.

Q. What are your duties as recording secretary? A. To take down the minutes of all of the meetings.

Q. Do you have any minutes of any meetings of the organization, of the union? A. Yes, sir.

Q. Are these the minutes? A. Yes, sir.

Q. Will you take them and refer to them, and tell us the date of the first meeting of the organization? A. The first meeting of the organization was February 24th, 1936.

Q. Before I go any further, were those minutes written by you? A. By my wife.

Q. At your request? A. Yes, sir.

Q. Were they taken from original notes made by you? A. Yes, sir.

Q. Where were those meetings held? A. At my house.

Q. Did you sign those minutes after you had them written? A. Yes, sir.

Q. Is that your signature on there? A. Yes, sir.

(280) Q. Are they a true statement of what happened? A. Very true, to the best of my ability.

Q. When did that first meeting take place? A. When?

Q. Yes. A. About 9:20.

Q. On what date? A. February 24th.

Q. How many employees of the Washington, Virginia and Maryland Coach Company were present? A. Twenty-four.

Q. Did all who were present become members of the union? A. Yes, sir.

Q. Do you know the names of the 24 men who were present that evening? A. That would be very hard for me to say.

Q. Who has that record, do you know? A. We have the record of all of our members, but I haven't the record of the men that were there that particular night.

Q. How many members of the union are there now? A. Fifty-nine, to be exact.

Q. Were they all employees of the same company by which you were employed? A. Yes, sir.

(281) Q. Now, after the 24th of February, when did you have your next meeting? A. The 3rd of March.

Q. Were you present throughout the entire meeting? A. Yes, sir.

Q. Will you tell us what went on at that meeting? A. Well, yes. Shortly after the charter was presented—

Mr. HUGHES: What is the purpose of it?

Mr. BLUM: You will find out when he answers. If he doesn't make the proper statement you can move to strike it out.

A. That meeting was to present our charter, and Mr. Clark presented our charter to us that night.

Q. Did you have any visitors at that meeting? A. A visitor—we had, I think he is the vice president of the Washington, Virginia and Maryland Coach Company, Mr. Joseph Arnold.

Q. Now, testimony was given yesterday to the effect—

Mr. LYNCH: We object to that form of a question.

Mr. BLUM: I haven't asked my question.

Mr. LYNCH: You have gone far enough to show that it is an improper question.

By Mr. BLUM:

(282) Q. Did you hear the testimony yesterday? A. Yes.

Q. Did you hear Mr. Leon Arnold testify as to the attendance of Mr. Joe Arnold? A. Yes.

Q. Did you hear Mr. Arnold testify that Mr. Joe Arnold was there at the invitation of yourself? A. But he was not.

Mr. HUGHES: I object, Your Honor. Mr. Arnold was not our witness yesterday, and he was the witness of Mr. Blum, and certainly it is elementary that you can't impeach your own witness, and he can't come in here and say that Mr. Arnold is telling the truth and then come in the next day and prove by somebody else that he is not telling the truth.

It may be true that they were not governed by the rules of evidence, but I think that that is going a step too far.

Mr. BLUM: On that same point, this isn't impeaching the testimony of any witness that I have called. Mr. Arnold made a voluntary statement without response to any questions asked him either on direct or cross examination, to the effect that Mr. Joe Arnold attended that meeting, and that he attended it at the invitation of certain men and he named those men, of which Mr. Frederick was one, and I certainly have a right to refute that evidence.

(283) Mr. HUGHES: There was no objection made to either that question or voluntary statement, and under those circumstances, it was adopted as the testimony of Mr. Arnold, and Mr. Arnold is this man's witness, and he is not our witness.

Mr. BLUM: I am asking this man on direct examination if he was there.

Was Mr. Arnold there at your invitation?

The WITNESS: He was not.

Mr. LYNCH: We object to that and move that it be stricken out.

Mr. CARMODY: That may be admitted irrespective of whether Mr. Arnold gave any testimony yesterday. He has a right to ask this witness whether he invited Mr. Arnold to that meeting.

Mr. LYNCH: We will take an exception.

By Mr. BLUM:

Q. When Mr. Arnold came to that meeting, how was he dressed? A. He had an overcoat on, a light gray overcoat, and a driver's cap.

Q. Is that the usual way in which you have seen him? A. I don't think I have seen him in a driver's cap before, and I was there seven and a half years.

Q. In that seven and a half years have you seen him (284) often? A. Probably a dozen times a day.

Q. And during that seven and a half years, was that his usual attire? A. Yes.

Q. Wearing a driver's cap? A. I had never seen him wear a driver's cap.

Q. When that meeting was held, did he participate in any of the discussions? A. Yes, sir.

Q. Will you describe his activities?

Mr. LYNCH: We object to all of this, may it please the Examiner, on the ground that it is immaterial and irrelevant and has nothing whatever to do with the issues in this case.

Mr. CARMODY: It seems to me it is a very important, material piece of evidence, when an official of the company attends a union meeting, in the guise of one of the employees, and participates in the meeting, whether he wanted to help organize the union, or destroy the union, or what. We don't know what he wanted to do there. He will tell what he wanted to do there.

Mr. LYNCH: There is nothing in the complaint on that point whatever.

Mr. BLUM: We certainly do allege that there has been coercion and intimidation to prevent these men.

(285) Mr. LYNCH: It is on the theory that they were discharged.

Mr. BLUM: I will read that section.

Mr. LYNCH: What section are you reading from?

Mr. BLUM: Just a minute. That is Section 7, and after describing the act we say?

"The respondent did interfere with, restrain and coerce, and is interfering, restraining, and coercing his employees."

Mr. HUGHES: That is by discharging.

Mr. LYNCH: You can't pick out one clause of a charge and attempt to make anything out of that. Even in a procedure before administrative bodies, they require them when they make a charge, to state the charges.

Mr. CARMODY: Do I understand that the complaint should cover all of the testimony that is to be given?

Mr. LYNCH: It covers the points, not all of the testimony, but the points which are brought out.

Mr. CARMODY: Would you think that if an officer of a company who had the right to discharge these men went uninvited to a meeting which men were joining a union, and there argued against the formation of the union, that that would in any way be intimidating the men?

Mr. LYNCH: I don't say that he has any right to discharge them, and in the second place, a mere fact that he is an officer, you probably know as well as I do (286) that many people are officers of a corporation that have no more power than that pigeon on that house over there.

Mr. CARMODY: I don't know that.

Mr. LYNCH: Take how many people have secretaries as directors of a corporation, and they are merely a legal director, or a legal officer, because the law requires it.

Mr. CARMODY: But they don't carry a title as administrative officers. This man is a vice president of the company, of the corporation.

Mr. LYNCH: That may be true.

Mr. CARMODY: There is nothing in the testimony to indicate whether he is or not.

Mr. LYNCH: There is nothing here that would show that he ever did any act as to the employment or discharge of these persons, and we submit further that they should allege if it is important to them, they should have alleged it in the complaint, which they did not do.

Mr. HUGHES: The complaint—it is alleged in the complaint as discharging these employees.

Mr. CARMODY: Intimidation and coercion is alleged, too.

Mr. BLUM: All that is true, but I am attempting to show here what is pointed out in the answer of the defendant in this case.

Now, the defendant says that you didn't learn that (287) there was a labor organization until February 28th, and I am showing how you learned it.

Mr. LYNCH: It shows at the bottom of page 3, by laying off and discharging said persons, and goes on to page 4, that he did interfere with, and coerce, by those acts. That is the only charge.

Mr. BLUM: I want to call further to the Examiner's attention in paragraph 17, in the answer filed—it starts off:

"Upon being advised that a labor union was being formed among respondent's employees, respondent made no effort to interfere with, restrain or coerce employees,

with respect to any right of self organization, or in their efforts to form or join a labor union."

Now, it is my contention that an answer filed is an answer to the complaint filed, and they thought it was important enough to answer that, it is certainly relevant for me to show that when they did find out that there was a labor organization, that they did intimidate the men, and failing to do that, they fired some of the men, and that is the purpose of this evidence.

Mr. HUGHES: Do you propose to show alleged unfair trade practices which are not embraced in your complaint, assuming that the answer shows some of them?

Mr. BLUM: I didn't get that.

(288) Mr. HUGHES: Do you propose to show unfair labor practices, which are not shown in the complaint?

Mr. BLUM: I am going to show those which are in the Act.

Mr. LYNCH: May it please the Examiner, it occurs to me that the Act says that there shall be a complaint filed which shall embody the charges, which the respondent shall be required to meet, and now the charges which are laid here are certain acts and things, and they are the charges, and now we have come here prepared and required to meet those, and I submit that something else, which the attorney now believes may result in some point which was not charged, he can't bring it into the case now, because it isn't a charge here.

Mr. BLUM: I just want to point out that I don't know whether Mr. Lynch has made his statement because of his greenness that he admitted before in this type of work, but we never proceed upon the charges in the case. We proceed only upon the complaint filed, and the complaint certainly alleges these things.

Mr. LYNCH: The complaint doesn't allege these things.

Mr. CARMODY: Mr. Lynch meant the complaint.

Mr. LYNCH: Yes.

Mr. CARMODY: Of course, the procedure for amendment is very simple. If it were discovered that the com-
(289) plaint needs amendment, in order to include this testimony, which I as Examiner feel is pertinent to the case, irrespective of what it shows after cross examination and direct examination of Mr. Arnold, but we can recess for amendment. In that event, counsel may be allowed a reasonable time for amending the answer.

In this particular case, the answer seems to me to be already made, covering the very point that we are discussing. I am disposed to see the evidence admitted, but I am not disposed to deny the respondent any rights that he may have here. I should like to recess for ten minutes, while counsel discuss this question among themselves as to whether or not an amendment to the complaint is necessary to include this testimony, and we will recess for ten minutes, and I wish you would discuss it yourselves.

Mr. LYNCH: Will you read that last question?

(The last question was read.)

Mr. CARMODY: On this question of amending the complaint to include that particular testimony the Chair rules that it is not necessary, that it has not been charged that the attendance at that particular meeting was an unfair labor practice. It may have had a bearing upon what ultimately became of the unfair labor practices as charged, and it is essential, as Mr. Hughes, the counsel said, during recess, that the testimony be clear on these
(290) points because other people than the Examiner have to read the record, and the record goes to the Board, and it may ultimately go to a court, and you may answer that question, if you know, within your own knowledge.

Mr. Arnold may be put on here to deny that he went to the meeting or deny that he participated in it or that he had any interest in the meeting.

Mr. LYNCH: Just a minute. We wish to take an exception to the Board's ruling in permitting the witness to answer this question and subsequent questions dealing with this line of testimony, without an objection to each particular question, and also on the Board's ruling that it is not necessary to amend the complaint.

By Mr. BLUM:

Q. Did you write into the minutes of that meeting the activities of Mr. Arnold there—and you have that before you there? A. Yes, sir.

Q. Will you describe those activities? A. Mr. Arnold came in the first thing, and I introduced him to Mr. Clark as Mr. Arnold, and Mr. Clark thought he was a driver and did not pay any attention to him.

Mr. LYNCH: We move to strike out what Mr. Clark thought.

Mr. CARMODY: All right.

The WITNESS: He said he didn't know.

(291) Mr. LYNCH: He may have said it later, and let Mr. Clark get on the stand and testify?

Mr. BLUM: Just testify to the things that you saw.

The WITNESS: Then I gave Mr. Joe Arnold the charter, and he read the names over, and he asked a very foolish question, as to why the British flag—

Mr. BLUM: Just say what he asked.

The WITNESS: And he asked why the British flag was on there, and he also asked in case any of us got fired, would the union feed us?

By Mr. BLUM:

Q. What else did he do at that meeting? A. Well, at that time, that was about all that he said, and then we asked Mr. Arnold to leave, and he did.

Q. Prior to the time that he was asked to leave, did he take the floor in any way, and make any speech in any way? A. About the organization?

Q. Yes. A. He said that he wanted to be a charter member—let me get that straight now—he wanted to be an honorary member, and Mr. Clark found out then who he was, and told him he couldn't be an honorary member or charter member, and then he asked him to leave.

Q. Did he ask you for the charter, or did you hand it to him? A. He came in, and I handed it to him, and (292) he pushed in and I showed it to him.

Q. What did he say before you showed it to him? A. He shook hands with some of the boys, and he shook hands with Mr. Clark as he was introduced as Mr. Arnold.

Q. Now, when he was asked to leave, did he leave? A. Yes, sir.

Q. And this was a meeting at your home? A. Yes, sir.

Q. Now, were you—or what was the date of that meeting that Mr. Arnold attended? A. Tuesday, March 3.

Q. And subsequent to that time, were you discharged? A. No, sir.

Q. When were you discharged? A. The 5th.

Q. That is subsequent to March 3d? A. Yes, sir.

Q. You were discharged on March 5th? A. Yes, sir.

Q. Will you describe the circumstances of your discharge? A. I was building a motor for a coach, 162, and I had been working on that motor some few days, and ten minutes to six, Mr. Wilsey said, "Come here, Frederick".

Q. Was that in the morning? A. The afternoon. I (293) was getting ready to quit work for the day, and I started laughing, and of course I knew what was going to happen because he had fired some the following morning, and he said, "Frederick, I hate to give you this, because you have got to go", and I asked, "Can you tell me what it is?" and he—and I asked, "Was it because of the union?" And he said, "No, it is because of the underhanded way you went about it", and he said later, I met him a few days later, and we went to a lunch and we had coffee, and he told me that the underhanded methods such as we had, meetings in our basement, that —and that was a good place to have a meeting.

Q. Don't give us the reason why you had the meeting; and did Mr. Wilsey make any statements to you,

but any experiences he had with a labor organization.
A. He told me that he had belonged to a labor organization for eight years, and that the union had never done anything for him.

Mr. HUGHES: That is objected to. I don't see what Mr. Wilsey's difficulties and other things have to do—

Mr. BLUM: He is an official of the company.

Mr. CARMODY: Wilsey discharged the man.

Mr. HUGHES: He is an employee along with the others.

Mr. CARMODY: I don't know whether it will stand up under cross examination, but it has been testified to that (294) Wilsey discharged him.

Mr. HUGHES: Is it the claim that Wilsey was the man that ran their work, or acted under Arnold?

Mr. BLUM: We said that the company, and its servants and agents—you don't deny that he was an agent?

Mr. HUGHES: He was employed, along with the others. I submit I don't see what his experience with labor unions has to do with it unless you are going to work on the theory that it was Mr. Wilsey's own idea that the men should be fired; if you are working on that idea, it is admissable.
I ask a ruling.

Mr. CARMODY: The objection is denied; answer the question.

Mr. HUGHES: Exception.

By Mr. BLUM:
Q. What did he tell you about his experience with another labor organization? A. He said he had been in a union for eight years and that the union had never done anything for him, and that he said that the union wage was 85 cents an hour, and that was all that could

be gotten, and that he thought that he was capable of more money than that.

Q. Did he say anything to you about advice to be gotten from him? A. He said I should have come to (295) him, and talked it over before I went into the thing.

Q. Before you joined the union, you should have talked it over with him? A. Yes.

Q. Now, you were the day foreman? A. Yes, sir, working foreman.

Q. Did Mr. Griffin ever work under you in the daytime? A. No, sir.

Q. Did all of the men who worked in the day time in the garage come under your supervision? A. Yes, sir.

Q. And during the time that you were the day foreman, did Mr. Giffin ever work for you during the day? A. No, sir.

Q. And when did the idea first occur to you as to the joining of a labor union? A. On the week of February 17th.

Q. How did that come about? A. I was over in my home one night about—I think it was during that week—and I judge it was nine or ten o'clock, some time about that time, and a fellow came around and said, "Mr. Harmon wants to see you" and so I went around there, and Mr. Giffin happened to be there, and he was talking about the union.

Mr. CARMODY: Where?

(296) The WITNESS: At the garage, at the Washington, Virginia and Maryland Coach Company garage. I had a perfect right to go in there day or night.

By Mr. BLUM:

Q. And was the question of a union suggested to you at that time? A. Yes, sir.

Q. That was the week of February 17th? A. Yes, sir.

Q. Now, after the 21 extra buses were put on, did you get any more mechanics at the garage? A. We got two more mechanics, after we had about fifteen buses and then we got six more, and of course we had one more mechanic, and then we got six more buses, and then

we got another mechanic, and that gave us two more, and those buses, particularly the twin coaches, are very hard to keep on the road.

Q. Did you get any additional greasers? A. One, at night; and he was put on, I would say, after we got the twenty-one buses.

Q. When was that? A. That was in the fall, probably September or October in 1935.

Q. Now, who taught the new mechanics their trade? A. I don't think anybody taught them. I think that (297) if he came there as a mechanic, he was a mechanic when he came there, and nobody knows about the new stuff when it comes, and we have to learn from Mr. Wilsey on down.

Q. Who does the teaching on the new stuff? A. If a bus came in that needed a transmission taken out, I did it myself, and possibly I got somebody to help me.

Q. Did you ever receive instructions from Mr. Wilsey? A. I have asked his advice about different things, and we have worked it out together, and maybe mine would be right and maybe his would be right.

Q. Do you know whether any other men worked under you during the day and received instructions from Mr. Wilsey? A. Well, instructions?

Q. In how to repair a bus? A. No, we all got instructions, and if we had a wreck, I have done all sorts of work, from body building on up, and if we had a wreck, we would ask him what he thought was best, and he would say it was or do it the other way.

Q. What other men in the day force were dismissed besides yourself? A. What other men?

Q. Yes, mention their names. A. Miller, McCawley, Bureh, Frederick—Pete Frederick that was—Mr. Bell—

(298) Mr. CARMODY: That is five.

Mr. BLUM: Six, including yourself.

The WITNESS: McDonough, Gildart.

I think that is nine.

Mr. BLUM: Yes, including yourself. Were all of these men that were dismissed members of the union?

The WITNESS: Yes.

By Mr. BLUM:

Q. Were those men present at the meeting in your room when Mr. Arnold attended? A. I don't think all of them were. Yes, they were, sure. They were day men.

Q. Did Mr. Arnold see them all there? A. Yes.

Q. He went up and spoke to them? A. And even made comments on some of our fellows, how well they were dressed.

Q. Did any of the men remain of the day force? A. There was a few remained, but I don't know this to be a fact; all I know is what was told to me.

Q. How many men were on the day force in the garage? A. There were five left.

Q. Were any of them members of the union? A. They were all members. There are six left, all members except one.

(299) Q. Were there any of the members of the company who were not members of the union? A. Yes, sir.

Q. Were any of them fired? A. No, sir.

Q. Now, during the most of November, December, and January of 1935, and 1936, did you have any unusual strains on the men's time, in repairing buses? A. We couldn't repair them; during the bad weather, there was ice and snow, and we had to take the entire crew and put them on chains, and rebuilding chains, and pulling them out of ditches, and such stuff as that. We could only just patch them up and try to keep them running, but as far as repairing, it was impossible.

Q. Did Mr. Wilsey know that? A. He gave us those orders, and I was on the road all day, pulling them out of ditches, and pulling them up hills, from seven o'clock in the morning on.

Q. Now, during your seven and a half years with the company, can you state how many buses, to your knowledge, had any parts burn up because of lack of grease in the various moving parts? A. I would say six.

Q. In the entire seven and a half years? A. Yes, and you wouldn't say that was for lack of grease, be-

(300) cause a bearing may burn up and show that it is lack of grease, but it can be wore, and after anything wears so long, whether grease is put in there or not, it will still show to be burnt.

We had a case of that just after I quit there, and they built a differential up, and forgot to put grease in it and then is burned up, which had never occurred during my employment.

Q. Since this complaint has been filed, and since you have been discharged, have you made a personal investigation to see the number of breakdowns the company has had on these buses? A. I have.

Q. How did you make that investigation? A. I saw one of the fellows in the shop.

Q. A man who has charge of the repairing work?

Mr. HUGHES: We object to that. We object to this, and I don't see where it is material in any way.

Mr. CARMODY: What is the relevancy of it?

Mr. BLUM: The company has alleged in its answer that these men were discharged because of their inefficiency and because of their failure to keep the equipment in proper repair, and I am going to attempt to show through this witness that since these men have been discharged, that the company's equipment is in (301) worse repair than it has ever been, and they have had more service calls.

Mr. CARMODY: It is admissable, as part proof. There may be other proof.

Mr. HUGHES: It may have gotten worse men, and the new men may have been worse, but that does not prove the old ones were any good.

Well, to save time, let it go in.

Mr. LYNCH: Exception.

By Mr. BLUM:

Q. How did you go about your investigation? A. I asked—and I went to a man's house, and asked him if he would get that.

Q. What was the information you received from him?

Mr. LYNCH: We object to it. Let him call the mechanic here, and he knows who he is.

The WITNESS: I will call him if you want him.

Mr. LYNCH: We will get it. We object to it, and let him bring the man here. We had to bring a man here from New York.

Mr. BLUM: I will withdraw the question. That is all.

Mr. LYNCH: What is the man's name that gave you the information?

The WITNESS: I would rather not give it.

Mr. LYNCH: I will ask the Board to require him to give the man's name.

(302) The WITNESS: Am I compelled to give that man's name?

Mr. BLUM: Certainly they objected to that, and they wouldn't let the man's testimony go in.

Mr. HUGHES: We move to strike out all of the evidence as to the number of breakdowns, and so forth. We make the motion, Your Honor, to be stricken.

Mr. LYNCH: All of the testimony on that point, that is, up to the point where he attempts to show any changed conditions from the time of the letting go of these men, and their separation from the service.

Mr. CARMODY: Strike it out. It is relevant, and if it can be gotten in in some other way, all right, but strike it out.

Mr. LYNCH: The heavy mechanical work was done during the day, wasn't it?

The WITNESS: That is right, the best part of it.

By Mr. LYNCH:

Q. Who were the other officers of the union besides yourself? A. Mr. William West, and Harris. Harris is president, and he is still working.

Q. What is Mr. West's position with the union? A. Secretary, or something Financial secretary.

Q. He is financial secretary, and you are what? A. Recording secretary.

(303) Q. Recording secretary? A. Yes.

Q. And Mr. Harris is the president? A. That is right.

Q. Any other officers? A. That is all.

Q. Did you say Mr. Harris is still working? A. Mr. Harris is still working.

Q. And of the 59 members that you referred to, how many were discharged? A. Twenty.

Q. And the remaining 39 are working? A. That is right.

Q. Now, when you took Mr. Arnold over to the meeting this night—

Mr. BLUM: He didn't say that. I object to that.

By Mr. LYNCH:

Q. Did he go over there with you, Mr. Frederick? A. He didn't go over with me. I was already home.

Q. When did you first see him with relation to your house? A. When he was in my cellar.

Q. With you in your cellar? A. Yes, sir.

(304) Q. You knew who he was? A. Certainly.

Q. You didn't ask him to leave? A. I asked no one to leave, and why should I throw him out? I had lots of friends who was willing to throw him out.

Mr. HUGHES: Did the others know he was Joe Arnold?

A. Yes, sir.

By Mr. HUGHES:

Q. How soon did they find it out? A. Yes, sir.

Q. Was that driver's cap to conceal himself? A. He thought he could get by, but the door happened to be unlocked, and he walked in, and he didn't rap, but he just walked in.

By Mr. LYNCH:

Q. And he was taken up by you immediately and

introduced to Mr. Clark as Mr. Arnold? A. That is right.

Q. And you had talked to Mr. Clark before and Mr. Arnold was the president of the company? A. Mr. Leon Arnold, that is right.

Q. Yes, and he went around and spoke and shook hands.

Mr. BLUM: I want to clear that up; Mr. Clark knew that Mr. Leon Arnold was president of the company.

The WITNESS: Mr. Clark thought he was a bus driver.

(305) Mr. LYNCH: I move to strike that out.

Mr. CARMODY: Well, Mr. Lynch, you asked if he knew Mr. Arnold, and I thought the witness said Mr. Leon Arnold.

Mr. LYNCH: The only point was about what Mr. Clark thought. I think that you ought to put Mr. Clark on for that, and not this witness.

Mr. CARMODY: I didn't know that this had goten in there again.

Mr. LYNCH: The witness is insisting on getting it in.

Mr. CARMODY: It doesn't belong in the testimony, and it should be taken out, and please be careful not to tell what somebody else thought, Mr. Frederick. All witnesses must be careful on that point. What you know yourself you can testify to.

By Mr. HUGHES:

Q. When Mr. Joe Arnold appeared, did the other men appear as though they knew he was Joe Arnold? A. Yes.

Q. Even with his hat on, and overalls on? A. Overcoat, yes.

By Mr. LYNCH:

Q. And the statements that he made, he inquired

first that he wanted to be an honorary member or charter member? Is that correct? A. Yes.
(306) Q. And he wanted to know if the union would feed you if you were out of work? A. Yes.
Q. And was there any answer to that?

Mr. BLUM: Let us have the question worded properly.

The WITNESS: He asked Mr. Clark if the organization would feed the men, in the meeting, in the event that they lost their jobs.

By Mr. LYNCH:
Q. Yes; and what did Mr. Clark say? A. I am not supposed to tell. Didn't he just tell me what I shouldn't say?
Q. What was Mr. Clark's reply? A. "Why should the organization feed them?"
Q. That was Mr. Clark's reply? A. Yes.
Q. Were all of the members present then? A. All 59 members.
Q. All of the persons were then in the room, at that time? A. Yes.
Q. They all heard the answer? A. Possibly, I don't think any of their ears were plugged.
Q. Did he stand up when he asked the question?
(307) A. He stood up all of the time.
Q. All of the time? A. Yes.
Q. Were the other persons sitting? A. Some of them were, and some of them were standing.
Q. Was Mr. Clark up on a sort of a pedestal where he could look over the whole gathering and answer these questions? A. No, sir, he was sitting in a chair.
Q. And he wanted to know—what did Mr. Clark say to him. He said he wanted to be an honorary member, or a charter member? A. He said he couldn't be any kind of member.
Q. And then you asked him to leave? A. No, Mr. Clark asked him to leave.
Q. And he left, of course. A. Yes.
Q. And before that time nobody asked him to leave? A. No, sir.
Q. The case that you first spoke about, of the week

of February 17th, who was the man that came over to your house? A. Mr. Atwell.

Q. Mr. Atwell? A. That is right.

(308) Q. And he told you to come down to the garage, that there was a union man down there, or what did he tell you? A. Mr. Harmon wanted to see me.

Q. What did he say ? A. He was telling me about this union man.

Q. And Mr. Giffin was there? A. Yes.

Q. And what did Mr. Harmon say to you about this union man? A. He said he was trying to organize, and he asked me what I thought about it, and I said I thought it would be a good thing.

Q. Was Mr. Giffin in there? A. Yes, sir.

Q. Mr. Clark? A. No, sir, he was out in an automobile, and that was parked on the road.

Q. He was waiting in the automobile at the roadside? A. Yes, sir.

Q. Did he come in that evening? A. Not in the garage, no, sir.

Q. Where did he come in that evening, when you talked to him? A. He went into Arnold's office.

Q. Yes? And who else went in with him? A. My-

(309) self, and Mr. Baxter.

Q. How long did you stay in there? A. About ten minutes, not over that, and we was to have a meeting on Saturday.

Q. Who was Mr. Baxter? A. Night cashier.

Q. Night cashier? A. Yes.

Q. And so you and Mr. Baxter and Mr. Clark went in Mr. Arnold's office, arranging for this meeting to come about the following Saturday? A. That was on George Washington's birthday, the 22d of February.

Q. How long had you been back there talking to Mr. Harmon, first? A. Oh, I don't know, I wouldn't say over five minutes at the most.

Q. How long did you talk to Mr. Giffin? A. Well, I was talking to both of them at the same time.

Q. Were you able to discuss this entire matter within five minutes? A. Yes, because I wanted to listen to Mr. Clark, and Mr. Giffin didn't know anything about the union, and so I went in and talked to Mr. Clark, and

(310) I went around and got him in an automobile, and he told us about it, and we said, all right, we will arrange a meeting Saturday night.

Q. What did Mr. Giffin say to you and Mr. Harmon about the garage? A. Mr. Giffin said that there was an organizer out in his automobile, and I said, "Let's talk to him."

Q. Is that all that he said?

Mr. CARMODY: Did you think that you had a right to join a union?

The WITNESS: I should say so.

Mr. CARMODY: Where do you think that you got that idea?

The WITNESS: Well, I don't know where it got in my head, but I just decided that we could join a union if we wanted to, and after that Wagner Bill was passed, in last July, if 51 per cent of any organization could organize, if they have the ruling factor, and I thought if we could get 51 per cent we would be all right, and we got 51 per cent, but we couldn't have been all right, to get out of a job.

By Mr. LYNCH:

Q. What did Mr. Baxter, or what part did Mr. Baxter take in the discussion there that night? A. He thought it was a good thing, just like I did, and so we arranged for a meeting over at my house, and he works night, and he couldn't get over there that particular (311) night, and that was on February 22d. It was all mechanics there that night.

Q. Did you have a meeting on February 22d? A. We had a little discussion there on February 22d.

Q. That wasn't an official meeting? A. That was just a little discussion, and Mr. Clark was there.

Q. Was Mr. Giffin there? A. Yes, sir.

Q. And then you had a meeting also on March 3, didn't you? A. Oh, yes, we had a meeting on March 3rd.

Q. What time, sir? A. That meeting started at 12:30.

Q. A. M.? A. P. M.

Q. What time did the meeting start on February 24th? A. 9:20.

Q. And who was there at that meeting? A. Well, that would be hard for me to say.

Q. Haven't you all of your records? A. No, I haven't all of my records.

Q. How many were at the meeting on March 24th—on February 24th? A. There was 24.

(312) Q. Twenty-four members. How do you know if you don't have the names there? A. We had the applications to show.

Q. Don't you have a record on that book of the names of those persons?

Mr. CARMODY: What is the purpose of this line of questioning?

Mr. LYNCH: I would like to show it here.

Mr. CARMODY: What is "it"? The witness' veracity, or some information?

Mr. LYNCH: Were any of the night attendants there?

The WITNESS: I don't think so. Possibly Mr. Harmon was there.

Mr. LYNCH: Let us know, please, sir, can you let us know from this reference?

Mr. CARMODY: You are talking about the first meeting?

Mr. LYNCH: Yes, February 24th.

Mr. CARMODY: I think he testified that he went over during his lunch period, and counsel wants to know whether he was there at nine o'clock or ten o'clock, to try to find out if he told the truth.

The WITNESS: Yes, sir.

Mr. LYNCH: He was there.

Mr. CARMODY: Do you remember who was there, and when they came in, and if you do, you can answer that question.

(313) The WITNESS: I am just trying to remember if he was there or not.

Yes, he was there.

By Mr. LYNCH:

Q. He was there? A. Yes.

Q. Were any of the other mechanics there? A. No, sir.

Q. All of the day mechanics were there? A. Yes.

Q. And any of the drivers? A. At this 24th meeting?

Q. Yes. A. Yes, sir.

Q. Then at the meeting on March 3rd, held at 12:30 o'clock. A. That is right.

Q. How long did it last? A. It lasted until 2:45.

Q. A. M.? A. Yes, sir.

Q. And that is the date that the charter was delivered? A. That is right.

(314) Q. Delivered by Mr. Clark? A. Right.

Q. Was Mr. Giffin present? A. Yes, he was present.

Mr. HUGHES: Who is Mr. Giffin?

The WITNESS: He was more or less of a chauffeur for Mr. Clark, and he more or less carried Mr. Clark around.

By Mr. LYNCH:

Q. Was he employed at that time? A. I didn't know anything about the man's business.

Q. You didn't ask him anything.

By Mr. HUGHES:

Q. Did you know him back in September? A. Yes, I know him.

Q. He worked under you, didn't he? A. He worked under Mr. Harmon.

Q. Did he ever talk about labor unions? A. Not to me.

Q. Did he say anything in your presence? A. Not to me.

Mr. CARMODY: If he had, what is the relevancy of it?

Is this a criminal trial, charging a man with having attempted to organize a union. That has no relevancy that I can see, that he talked to anybody.

How would it have relevancy?

Mr. HUGHES: We filed an answer here wherein we (315) show that over a long period of time there was a consistent friendly attitude on the part of the management and the men and that consistently continued up until September of last year, at which time things began to go mysteriously wrong.

Mr. CARMODY: In what way?

Mr. HUGHES: The road calls began to mount up, and the friendly relations were disrupted, and the men didn't seem to get along with each other and the management.

Mr. CARMODY: Is there evidence they didn't get along together?

Mr. HUGHES: Yes; and about that time it began to develop that Mr. Giffin put in his appearance and stayed there for three or four weeks, and then he left, and then he appears again.

Now, it may be that those difficulties were the result of Mr. Giffin's activities for all we know.

Mr. CARMODY: Will you have witnesses to indicate that?

Mr. LYNCH: I think several of them have already indicated it, Mr. Examiner. I think the record pretty well shows that now.

Mr. BLUM: I move that the remarks of both Mr. Hughes and Mr. Lynch be stricken from the record. They were not present at that time. They are not proper at this point, and they are purely argument.

(316) Mr. CARMODY: Strike my own comment, and the answers of both of them.

By Mr. LYNCH:

Q. Did you ever see Mr. Clark after the 17th of February? A. Did I ever see him?

Q. At the terminal, or the garage? A. No, sir.

Q. Or Mr. Arnold's office? A. No, sir.

Q. Did you ever see Mr. Giffin there? A. No, sir.

Q. When was the next time you saw Mr. Giffin? A. February 22d.

Q. And did you, Mr. Frederick, talk to your mechanics about this union? A. I did.

Q. And you talked to them while you were working in the working hours? A. We all got together at 12 o'clock, and talked this thing over.

Mr. BLUM: Was that your lunch hour?

The WITNESS: Yes.

By Mr. LYNCH:

Q. And you talked it over during the rest of the (317) time? A. Not necessarily.

Q. Didn't you talk about it during the rest of the day? A. No, sir.

Q. You only talked about it during the lunch hour, and when the lunch hour stopped, you stopped talking about it right away? A. We talk about different things during the working period.

Q. I am talking about the union, during the working period.

Mr. CARMODY: He may answer that. It is a fair question. Whether they talked about it or not. They can talk about baseball, or anything.

By Mr. LYNCH:

Q. Didn't you actually talk about this union, and the activities of the union, during other times than your lunch hour? A. I would say we did not.

Q. That is all I want to know. A. We had time before we went to work, and lunch time, and from six o'clock on, to talk about it.

Q. You talked about it before work, and during lunch hour, and after work? A. Yes, sir.

(318) Mr. BLUM: I move that the question and answer be stricken out, because the witness was taken unawares.

Mr. CARMODY: That question is all right.

Mr. BLUM: There is one point I forgot to ask you about, Mr. Frederick: Do you recall the time when Mr. Storer came in to examine the brakes?

The WITNESS: Yes, sir.

By Mr. BLUM:

Q. Did you see him examine the brakes on that bus the first time? A. 107?

Q. Yes. A. I did not.

Q. Now, how did you happen to get in touch with Mr. Storer? He testified he examined it with you. A. He first started testing buses with our stock room clerk, Jack Piper. I was on my lunch hour, and when I came back, my shop foreman told me to help him, which I did.

We tested a few of them, and then he said: This 107, somebody had been fooling with it," and I said, "All right, let us test it over," and the emergency brake did not come up to specifications, and then he said, "Somebody has been bothering with it," and I said, "You are going down in this pit with me," and I proved to him that it had never been touched, and the cotter nuts (319) hadn't been touched, and the mud was on, and I later found out that grease was on the brakes.

Q. And they hadn't been tampered with? A. No, sir.

By Mr. HUGHES:

Q. You have heard the testimony of Mr. Harmon and Mr. Hall and several of the others? A. Yes, sir.

Q. And they have been with the company a long time? A. Yes, sir.

Q. You have been with the company seven and a half years, haven't you? A. Yes, sir.

Q. During that period of time, weren't your relations with the company friendly? A. They were.

Q. And you had no serious cause of complaint, did you? A. I went to Mr. Wilsey last fall and asked him

about a day off a week, and he promised it to me. That was last summer, and he promised it to me, and he promised all of us, and I was grinding valves on Mr. Leon Arnold's Cadillac—I mean on his Buick—and he came out there, and I said, "Mr. Wilsey, when are we going to get our day off a week?" and he said, "Well, I will have to give it to you to keep your mouth shut"—and I said, "Thank you."

(320) So it went on for a couple of more weeks, and I kept asking him, and of course when the winter came on, we didn't ask him for it, because the work was bad, during the winter.

Q. Were you paid by the day or the week? A. By the week.

Q. During that period of time, outside of that particular instance, there wasn't any concerted effort on the part of the men to go to the management, and obtain any particular raise in salary, or decrease in hours?

Mr. BLUM: Objected to.

Mr. HUGHES: If he knows.

Mr. BLUM: If he knows, he can answer it.

Mr. HUGHES: If you know, was there any concerted effort, and did you go to the management and ask them for anything?

The WITNESS: Did I go to him? I went to him and asked him for a raise. I went for myself.

Mr. HUGHES: You didn't have any indignation meetings around there, or anything of that sort?

The WITNESS: No, sir.

By Mr. LYNCH:

Q. Had you applied for a job anywhere else during those seven and a half years? A. I got one.

Q. Are you working now? A. No, sir. Four years
(321) ago, I should say, we got a 10 per cent cut, and we was to get it back in the fall, and he did not give it to us, and so I worked on that winter and next year

I got myself a job at the Greyhound bus line and I went back and told my shop foreman that I would give them as much time as he needed, and he goes around in five minutes, and he was back in a short time, and he raised my salary, and then I asked him a year or so ago, if he would give me a day off a week, and he promised it to me, and he said he took it up with Mr. England.

I don't know whether he did or not. I never got the day off a week that was promised to me.

Mr. HUGHES: By the way, Mr. Frederick, you testified that about 59 of these men were members of the union.

The WITNESS: 59 are members.

Mr. HUGHES: Now, the remaining employees, if you know,—don't answer unless you know—were the remaining employees informed about this union?

The WITNESS: They were informed.

Mr. HUGHES: —or any effort made to get them to join?

Mr. BLUM: There is no relevancy if he does know.

Mr. BLUM: We are not making any charges about these other employees who are not members of the union. They are not at issue.

Mr. CARMODY: What is the purpose of the question?

(322) Mr. HUGHES: Well, we simply wanted to show, Your Honor, that in so far as the answer to this complaint is concerned, the management got the idea that there was some difference of opinion among the men as to whether it was a good thing or a bad thing to go into the union, and some of them did not go in, and I would like to find out from this man, if he knows, whether those men were approached and asked to go in.

Mr. CARMODY: Let us bring them here.

Mr. HUGHES: I asked him if he knows.

Mr. CARMODY: Do you know?

The WITNESS: I do not know why.

By Mr. HUGHES:

Q. Did you make any effort yourself to get any of the men to join who did not join? A. Yes, sir.

Q. Which ones? A. What are their names?

Q. Which ones did you approach who did not join? A. I approached one particular man, is all. I will say two; and they said that they would think it over, and before they got time to think it over, I was outside, and then I couldn't get in touch with them.

Q. Would you mind giving us their names? A. One of them was Rudacille, and the second one was—I can't think of it.

(323) Q. Did you go to them, Mr. Frederick? A. I was talking to them.

Q. You approached them? A. Yes, sir.

Q. They didn't approach you? A. No.

Q. Who told you to go to them? A. On my own free will.

Q. Did you give them arguments as to why they should join?

Mr. CARMODY: It has no relevancy whatsoever.

Mr. HUGHES: Just for the record, let me put down just what relevancy we think it may have.

Mr. CARMODY: Let us see—off the record.

(Whereupon there ensued discussion off the record, after which the following occurred.)

Mr. CARMODY: All right. Go ahead.

Mr. HUGHES: Mr. Frederick, when you went to these men, let us take the first man you went to, who was that one?

Mr. BLUM: That is objected to.

Mr. CARMODY: That whole line of questioning is out.

Mr. HUGHES: We will take an exception to that.

We have no further cross examination.

By Mr. BLUM:

(324) Q. I have one other question. You were the shop foreman during the day? A. Yes.

Q. Now, up until the time you were dismissed and from a month or two months prior, did you ever receive any complaints from the management or from Mr. Wilsey, to the effect that you were not keeping the buses in proper repair? A. No, sir.

Q. Now, your relationship with the company, for seven and a half years, except for those instances that you just described, was very amicable and agreeable? A. Yes, sir.

Q. Was there any reason that the company had because of your conduct or because of your attitude, in firing you upon that date?

Mr. LYNCH: Wait a minute.

The WITNESS: Yes, sir.

Mr. LYNCH: We asked the witness to wait a minute.

Mr. CARMODY: Strike the question, and the answer. You can not ask him what the company thought, and what the company had in mind.

Mr. LYNCH: The answer goes out, too.

Mr. CARMODY: Yes.

Mr. LYNCH: Mr. Witness, wait until we have a (325) chance to object.

Mr. BLUM: Why do you think that the company dismissed you?

Mr. LYNCH: That certainly can not be admitted

in evidence, as to why he thinks that the company dismissed him.

After all, you are calling for the conclusion, and the result of the operation of minds of several people, of the corporation.

Mr. HUGHES: The question has already been answered, because he has testified to what happened when he was fired, and his conversation with Mr. Wilsey, and it seems to me we are going over it again.

Mr. BLUM: The respondent's attorneys have established through the cross examination that the relationship of this man with this company, except for those two instances, was perfectly amicable, and that was brought out on cross examination, and it wasn't brought out on direct, so if that situation continued, and the man was fired without any reason, there was no reason for firing, and I want to know why he thought he was.

Mr. HUGHES: Do you contend that there has got to be a reason for firing a man?

Mr. BLUM: Yes, if his relationship was amicable for seven and a half years.

Mr. HUGHES: Do you think that this Board has (326) jurisdiction over that?

Mr. LYNCH: We submit that the question is highly improper, and we are just trying to get facts and not conclusions, and views, and opinions.

Mr. CARMODY: Well, when a man is separated from a job that he has held for seven and a half years, at a time when nine or ten million of people are out of work and can't get employment, and when the Federal Government is appropriating billions of dollars a year to take care of the unemployed, I suspect that when a man is fired under those circumstances, he has some idea of what caused it, and now he may not have the right idea, and he may not know what caused it, but this man had a mental reaction when he was discharged from a job where he had been, as far as he knew, satisfactory, and

where his relationship with his immediate boss, and the rest of the company, was satisfactory.

Now, what did you think happened to you when you got your dismissal?

Mr. LYNCH: We enter our objection.

Mr. HUGHES: We hate to object to the Examiner's questions, but we have got to preserve the record. He can show what occurred, from which he might draw an inference, but I don't think we can have what he thought. If anything happened which gave him an idea, he can (327) show that, but I don't think he can say that it was his idea.

Mr. CARMODY: Well, a good many things had happened in a short space of time in that organization, and Mr. Frederick had taken an active part in the organization of a union, and he had invited men, or men had come to his home, where a meeting was held to organize a union, and at the meeting at which the charter was given to this group, the vice-president of this company appeared uninvited and made some suggestions with respect to how the union ought to be conducted or what the relationship of these men might be to the union, and a few days later, he is discharged, after having been called in to a bus by Mr. Wilsey, his immediate boss—no, excuse me, that was Harmon—but he was discharged.

Now, he must have had, in his own mind, some idea of the reason for his dismissal, and did you think it was because you had failed in your work?

The WITNESS: No, sir.

Mr. HUGHES: The same objection and exception.

Mr. CARMODY: What did you think.

Mr. HUGHES: The same objection and exception.

The WITNESS: What did I think I was fired for?

Mr. CARMODY: Yes.

The WITNESS: Because I had joined a union.

By Mr. CARMODY:

(328) Q. Why? A. Because Mr. Wilsey told me that it wasn't in joining a union, but the underhanded methods, and what difference would it make where I joined it at?

Q. That is out, and that is not important. What did you do immediately after you were discharged? A. I went home, of course, after I got my money.

Q. How long did it take you to get your money before you went home? A. How long did it take me from the garage to get home?

Q. From the time you were discharged, to get your money? A. Oh, I got my money as soon as I was discharged, and Mr. Wilsey had my money for me when he discharged me.

Q. And handed it to you? A. Yes.

Q. Check or cash? A. Cash.

Q. Up to what time were you paid? A. Up to the present date.

Q. I mean up to the date that you were discharged? A. Yes.

Q. What time of day were you discharged? A. Six o'clock in the afternoon.

(329) Q. And you were paid up to six o'clock? A. Yes.

Q. You work regularly until six o'clock in the garage? A. Yes.

Q. What time did you go to work? A. Eight o'clock.

Q. Yes. What did you tell your wife when you went home?

Mr. LYNCH: We object to that.

Mr. CARMODY: Did you give her a reason for your discharge?

The WITNESS: I didn't have to give a reason.

Mr. LYNCH: We have an exception to that.

Mr. CARMODY: All right.

By Mr. CARMODY:

Q. Did you give her a reason? A. Why I was fired?

Q. Yes, sir. A. Yes, sir, I said to her, "Well, I have got it," and she said, "You are like the rest of the

boys, and the union will kick you out because you lost your job," and she said, "Don't worry," and so I didn't.

Q. Had she ever attended one of these meetings? A. No, sir.

Q. Had she seen the men? A. Yes, sir.

Q. How long after the meeting did she write up the (330) minutes? A. She wrote up the minutes, I would say, possibly three or four days or a week afterwards.

Q. Did she know that they were minutes of the union meeting? A. Yes, sir.

By Mr. HUGHES:

Q. Mr. Frederick, you stated that you told your wife that you were fired because you joined the union; was that pretty much your statement? A. Yes, sir.

Q. Now, the reason you told her that was because of what Mr. Wilsey told you? A. Yes, sir.

Q. That is all—and that was the only reason you had to believe that? A. Yes, sir, that was the only reason.

Mr. BLUM: Now, Mr. Examiner, they have a witness:

Whereupon PRESTON MASON was called as a witness on behalf of the respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. LYNCH:

(331) Q. Will you give your name, please? A. Preston Mason.

Q. And your address? A. New York City.

Q. More definitely than that. A. Well, General Delivery.

By Mr. CARMODY:

Q. What is your business? A. Private investigator.

Q. Investigator? A. Yes, sir.

Q. By whom are you employed? A. I would rather not answer that, because it would jeopardize my position at this time, being of a secret service nature. However, if you think it is required, why I can give it to you.

Mr. LYNCH: We have no objection to your answering.

The WITNESS: My position would be jeopardized by giving that information. My services would no longer be required if that information should get out.

By Mr. CARMODY:

Q. Don't answer that for the moment, then. We will come around to it. You don't work for yourself, then? A. Occasionally, yes, sir.

Q. But you are in the employ of another organization? A. That is correct.

(332) Q. Do these investigatory jobs such as testified to here yesterday come through your employer, or do you get them by direct contact? A. I solicit them myself, that is, in this case I did.

Q. This case? A. Yes, sir.

Q. And did you do this on your own? A. Yes, sir.

Q. So that at the time you did this job you were not working for another employer? A. No, sir.

Q. Over how long a period have you made this kind of an investigation, for this company? A. For this company, since 1931.

Q. Regularly or irregularly? A. Irregularly.

Q. Have they ever sent for you? A. No, sir, I have always solicited their business.

Q. About how often a year? A. Oh, once or twice a year.

Q. And how long do you stay, or how long did you stay, or when were you here last on this? A. The day before Thanksgiving, November 27th, and until December 8th, 1935.

(333) Q. And how many hours a day do you work on a job? A. It depends on the job. Some require eight hours and others do not require that much because their lines are not that large.

Q. Do you wear a disguise? A. No, sir; only I change my clothes occasionally.

Q. Do you know any of the men whose buses you ride? A. Only from their faces, not their names.

Q. How do you learn their names? A. Well, I don't learn their names. I turn in my report by bus number, time on, and time off, place on, and place off.

Q. Are you a bus operator yourself? A. No, sir.

Q. Have you ever operated a bus? A. No, sir.

Q. Are you a skilled bus mechanic? A. No, sir. I have operated street cars.

Q. Which end? A. Front end.

Q. What do you look for particularly? A. Particularly?

Q. Yes. A. Well, I don't know that there is anything particularly. They want to know everything that (334) goes on that would concern the company.

Q. Do you have any discussion with the company with respect to the character of the investigation that you are to make? A. Yes, sir.

Q. How is that set up? A. Well, as a general rule, there is only general instructions. I mean as to the riding on the lines, or any changes that might have been made since the previous check, and as a general rule they just want a general check and there is no certain—

Q. What is meant by a general check—what would you conceive to be your responsibility to the company when you are instructed to make a general check? A. Any information that would concern the company, in regard to indiscretions on the part of the men, keeping care of the buses, in good running order, whether they are clean.

Q. On scheduled time? A. On scheduled time, of course.

Q. With reference to the way they handle the affairs? A. If there are any discrepancies, they want to know that.

Q. Do you have a conversation with these men? A. Very seldom.

Q. Do you remember whether you had any conver- (335) sation with any of the men of this company when you were making the check here? A. I don't believe I did.

Q. How frequently do you report to the company? A. Every day.

Q. Written report? A. Yes, sir.

Q. At night? A. At the end of the day.

Q. You hand it in at the end of the day, or the next morning? A. As a rule I generally mail it that night, whenever I finish it.

Q. In a plain envelope? A. Yes, sir.

Q. To whom were these reports addressed? A. Mr. England.

Q. Do you ever get any instructions with respect to whether or not the men are satisfied with their jobs, and find out whether they are satisfied, or dissatisfied, or working conditions, and so forth? A. No, sir, not as a general rule.

Q. Do you work only for bus companies, or do you work also for street car companies? A. Street car companies and bus companies.

(336) Q. And do you rarely get instructions to find out whether the men are satisfied or dissatisfied? A. Rarely. Of course, every concern, if any information were to come to my ears, I would naturally report it.

Q. Do you ever know when you go on a property whether the company has an agreement with a union or not? A. No, sir, that isn't generally discussed.

As a general rule, if there is any labor trouble, it is worked from the inside and not as a check.

Q. Have you made investigations for any companies recently where they are dealing with unions? A. It has been about a year and a half or two years ago.

Q. Since you did that? A. Yes, sir.

Q. Was that in the East or West? A. Middlewest.

Q. During your investigation at that time have any bearing upon the union relationships, or did you make any comments on it? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Did you know at the time you made this check (337) that any of these men were interested in joining a union? A. No, sir.

Q. Did you hear any of them talking about it? A. No, sir.

Q. Did you hear any of them discussing union matters with passengers? A. No, sir.

Q. Did you make any comment on that in your report? A. No, sir.

Q. Did you know until you came here today that there was some question of organization among these men? A. No, sir.

Mr. CARMODY: That is all.

By Mr. LYNCH:

Q. Are these the original reports that you submitted to the company, Mr. England? A. Yes, sir, they are.

Q. Will you look them over, and see if they are all your reports, in your handwriting? A. Yes, sir, they are all there.

Mr. LYNCH: We ask that these be marked at this time. We would like to have them marked for identification.

Mr. BLUM: You can mark them for identification, but not for admission.

Mr. LYNCH: We will mark them for evidence later. (338) As a matter of fact, you are not entitled to see them until we offer them in evidence.

Mr. BLUM: Do you want to have them back?

Mr. LYNCH: No, we extend the courtesy to you of seeing them.

I might say, Mr. Examiner, that many of these things are very praiseworthy of the actions of these fellows.

I suggest, Mr. Examiner, that many of these won't have reference to any of these fellows, and we can only introduce those.

Mr. BLUM: There are some of them on the same page that are not members, and if you put any of them in, I want all of them in.

Mr. HUGHES: If he wants them all in, let them all go in.

Mr. LYNCH: We can have them marked if the Chairman wants to mark them.

Mr. CARMODY: This business of selecting them out is a very slow process.

Mr. LYNCH: Part of it wouldn't have any bearing on this case. If you want to mark them, you can have them in your custody, or I can keep them.

Mr. CARMODY: You can leave them here, and they will be marked for identification as Exhibit No. 3.

(Marked Exhibit No. 3.)

By Mr. HUGHES:

(339) Q. Mr. Mason, you never got any instructions from this company or Mr. Arnold or Mr. England to get any particular man, did you, or get anything on any particular man? A. No, sir.

Q. They never told you that they were out to fire somebody, and they wanted to get some evidence against them, did they? A. Absolutely not.

Q. And this investigation on this particular occasion was similar to [illegible] that you had heretofore conducted for the company in prior years, was it not? A. Yes, sir.

Q. And in no way different from those prior investigations, is that so? A. No, sir.

Q. What were you paid for this investigation? A. $5.00 per day.

Q. Did that include travel expenses, and living expenses? Did you pay your own way here? A. The expenses, that is, the bus transportation, and necessary expenses, I will say—no living allowance.

Q. But your railroad fare from wherever you were, was that paid? A. I was staying here in Washington.

Q. But your living expenses were not paid, lunches, (340) or dinners? A. No, sir.

Mr. HUGHES: That is all.

CROSS EXAMINATION.

By Mr. BLUM:

Q. Now, when you were conducting this particular investigation, I understood you to say that you were conducting it on your own and were not working for anybody? A. No, sir.

Q. Did you have a license as a private detective? A. No.

Q. Do you know whether it is required? A. It is not required.

Q. You stated that you never wore any disguises, but that you changed clothes. What do you mean by that? Did you disguise yourself as a workman? A. Yes, I would not have particularly overalls, but old clothes that I might have around.

Q. And you do that very often? A. That is correct.

Q. You never would go on one of these investigations dressed as you are now, would you? A. It would depend upon the job, of course. If the people all dressed that way, I would naturally keep dressed all of the time.

Q. And your usual attire is the attire that you are (341) wearing now? A. Correct.

Q. And if you would happen to get in a neighborhood where there were a lot of working people that wore overalls, you would try to dress up in the manner of those people? A. That is correct.

Q. Now, you state that these reports are all in your handwriting? A. That is correct.

Q. Is all of the handwriting on here, yours? A. Not—

Q. I am referring particularly to these names. A. Not the names.

Q. Is that your handwriting? A. No.

Q. Is that handwriting? A. No.

Q. Is that "O.K." in your handwriting? A. No.

Q. Is the underscoring in red crayon your handwriting? A. No.

Q. And where they appear in any place, it is not yours? A. That is correct.

(Witness excused.)

Whereupon CHARLES MAGAHA was called as a witness on behalf of the Board, and having been first (342) duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your name? A. Charles Magaha.

Q. Were you employed by the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. In what capacity were you employed? A. Bus operator.

Q. You actually drove the buses over a regular route? A. Yes, sir.

Q. How long have you been working with them? A. Two years to the day.

Q. Two years? A. Yes, sir.

Q. What was your route? A. From 619 12th Street, Washington, through Clarendon, Ballston, to East Falls Church. That is in Virginia.

Q. What time did you report for duty in the morning, or in the evening, whatever it was? A. I was due there at 2:35 p. m.

(343) Q. And what was your schedule? A. I left Hillwood—that is right on the other side of Falls Church, at 3:40, on my first trip coming into town, and I took the bus over in front of the garage, going up, and I left, or I turned in at night about 12:15 every night.

Q. Did you have a continuous route, did you have any stop-overs at the garage? A. I had in the run over in the evening around ten to fifteen minutes lay-over, in Clarendon.

Q. On the other side of Falls Church? A. Yes.

Q. Did you have any stop over at the garage? A. No.

Q. What time did you say you finished at night? A. About 12:15.

Q. Did you have any recess in Virginia during that time? A. No, it was a continuous run.

Q. Were you a member of the local division 1079? A. Yes.

Q. When did you join that organization? A. On February 23rd.

Q. How did you happen to become a member of it? What were the circumstances? A. On February 22, I (344) was approached, after I completed my run, by Mr. West, and we discussed it, and I told him I thought that it would be very good.

Q. And did he give you an application for membership then? A. I don't remember where I got the application.

Q. And at any rate you became a member of the union on the 23d? A. Yes.

Q. That is the next day? A. Yes.

Q. When were you fired? A. On March 4th, about two o'clock.

Q. In the evening? A. In the afternoon.

Q. Who fired you? A. Mr. England.

Q. What were the circumstances of that discharge? A. I reported for work on March 4th, and Mr. Kaylor, the cashier, told me he wanted to see me in the office,

and I went in the office, and Mr. England said, "Mac, your services are no longer required," and he said, "Turn your punch and your fare box covers and your letters in, and that is personal messages, and get your money," and I told him I had to wait a while until—my personal message back was at home,—and he said, "Hurry up and get them," and I said, "I have some-
(345) thing else to do."

I returned there between four and five o'clock and got my money.

Q. Did you ask him why you were discharged? A. No.

Q. Did he give you any reason? A. No.

Q. Prior to that time, had you had any conversation with Mr. Arnold relative to the union? A. I was in his office on a Monday before I was fired.

Q. With Mr. Arnold? A. Mr. Leon Arnold, and Mr. Joseph Arnold, and Mr. England were present.

Q. That was a Monday prior to your discharge? A. The Monday prior.

Q. And what transpired at that time? A. We brought up unions, and I told him that the men had been dissatisfied, at the lot of time that they were losing, and weren't paid for it, and the living conditions over there were higher than what the wages warranted, and a lot of things like that, and the men should be getting more money, at least $5.00 a day.

And the conversation went on for about two hours, I guess, but I was in the office one time before that; that was on February 28th, Friday, and I caught the two
(346) o'clock bus by my house, and Mr. Johnson is the one that drives it, and he told me, he said, "Well, things broke loose at the garage today" and I said, "Well, I expected that."

Mr. BLUM: Just tell us what happened.

The WITNESS: I got to the garage at 2:15, and that is the time that I usually get there. I walked in, and reported for work, and Mr. Kaylor said, "They want you in the office," and I went in the office, and there were four other drivers in there, and Mr. Stanton, Mr. Salter, and Mr. Lochart, and Mr. Densmore, and Mr. Arnold was doing the talking. He was telling how much money

he had lost in the last five years, and the last year was the only year—

By Mr. BLUM:

Q. Were there any other officials there? A. Mr. Arnold, and Mr. Joseph Arnold, and Mr. England.

Q. Go ahead. A. He asked us about whether we had joined the union or not, whether it was going to benefit us any, and it wasn't going to benefit him, and he couldn't pay any more money, and we were in there approximately ten minutes, and when we left he told us to leave our answers, whether we were going to stay in the union or not, with either he, Mr. England, Mr. Joe Arnold, or Mr. Kaylor, in the morning.

Q. That was on the 28th? A. Prior to the 28th.

Q. Mr. Leon Arnold said to you and these other (347) drivers to let him know by the next morning, whether or not you are going to continue as members of the union? A. Yes.

Q. And what then? A. Four out of the five were members then, and the other was thinking about it.

Mr. LYNCH: We were moving to strike out what he thinks about it.

Mr. BLUM: What is the name of that fifth man?

The WITNESS: Salters.

Mr. CARMODY: Strike out what he thinks.

By Mr. BLUM:

Q. Do you know whether he is a member of the union? A. I do not.

Q. Did any of the members of the union who were in that conference, come back the next morning and tell him that they were getting out of the union? A. I did not come back until that afternoon, so I don't know what answer they gave.

Q. Now, during the two years that you worked for the company, were you ever called on the carpet by the company? A. I was called about a year and a half ago, and we make a run through Ballston, and then make a "U" in Ballston, and I cut that short one time, and I

was called on the carpet for that. I do not know of any (348) other time I was on the carpet.

Q. That was after you were with the company only six months, and there were no complaints against you by the officials of the company? A. Mr. Arnold told me the Monday I was in there when I was fired that everything had been of the highest praise of my work.

Q. He told you that the Monday—the time that you were fired? A. Yes.

Q. Do you have any reason in your own mind as to why you were fired?

Mr. LYNCH: Same objection.

Mr. BLUM: It is the same question the Examiner asked. Do you have any reason in your own mind—

Mr. HUGHES: In this particular case, the circumstances are not the same.

Mr. CARMODY: They are not the same, and we won't have the question.

Mr. BLUM: That is all.

CROSS EXAMINATION.

By Mr. HUGHES:

Q. Mr. Magaha, when you had that talk with Mr. Arnold did he ask you on that occasion if you were a member of the union? A. On Friday, the 28th, he did. (349) Q. Friday the 28th he asked you? A. Yes, and I told him that I did belong.

Q. Well, didn't he say, or I don't know whether I understood you, but didn't he say "Come back and leave some word"? A. He told us to leave our answers with either he, England, or Joseph, or Kaylor, the next day.

Q. As to what? A. Whether we were going to remain in the union.

Q. Whether you were going to stay in? A. Yes.

Q. And did you have any answer the following morning? A. I did not.

Q. Do you know if the others did? A. I do not.

Q. You say that you came back the next afternoon, and on that occasion did you have any talk with them?

You just reported for work? A. I reported for work.

Q. And you went to work? A. Yes.

Q. Now, when Mr. Arnold talked to you on that occasion he didn't threaten you in any way, did he, or any (350) of the others? A. Well—

Q. What did he say, first of all, you claim he threatened you? A. He didn't threaten us, but he told us that he didn't see any advantage of it, and he wasn't going to have any union, and he never had had a union.

Q. And he was not going to have any union? A. Yes.

Q. Did you ask him what he meant by that? A. I just about know what he means by that.

Q. But you didn't ask him? A. If somebody tells me that I can't have something, I know what he means.

Q. By the way, were you present the night when Mr. Joe Arnold came into this organization?

Mr. BLUM: I object to that.

Mr. HUGHES: If he wants to keep it out on the theory it is beyond the scope of the direct examination, it is all right with me.

Mr. BLUM: It wasn't covered at all in the direct.

Mr. HUGHES: Did you say we could ask it or not? It might save time. All I am trying to show is that Joe Arnold didn't go in there concealed or disguised or anything like that, and everybody knew he was Joe Arnold, and it is sufficiently clear, it seems to me right now.

(351) Mr. CARMODY: He may answer.

By Mr. HUGHES:

Q. Did you know it was Joe Arnold? A. Yes.

Q. You knew it right away? A. Anybody could tell that.

Mr. BLUM: Was he wearing a driver's cap?

The WITNESS: Yes.

Mr. BLUM: Did he usually go dressed that way?

The WITNESS: No.

Mr. BLUM: That is all.

Mr. HUGHES: That is all.

Mr. CARMODY: Mr. Magaha, may I ask you one or two questions:

By Mr. CARMODY:

Q. Where did you learn to drive buses? A. Well, I had been driving trucks, heavy equipment, off and on, all of my life.

Q. Where had you been driving? A. I had management of seven trucks and a trailer here in the city.

Q. Did you drive any of those? A. I drove all of them off and on.

Q. When did you first drive a bus that carried passengers? A. It was March 3, 1934.

(352) Q. Where did you start? A. With Arnold.

Q. Where? A. With Arnold.

Q. How did you get the job? A. I asked Mr. England for the job down at the terminal, down at 12th Street.

Q. What examination did you have to go through before you got the job? A. We had to drive all types of buses over all of the lines; at the time it was snowing so hard we couldn't make it to the end of the line.

Q. For how long a period did you drive those buses before you were given a regular run? A. About eight or nine days.

Q. Were you paid during that time? A. No.

Q. What instructions did you get with respect to handling fares and transfers? A. Each driver on each line told us the different routes that we had, and the fare zones, and the inner-fare zones after we got started on the route, and the short zones, and each driver on each line would instruct us on that.

(353) Q. What equipment do you carry on a bus? A. My equipment is a changer, and the company furnishes —I furnish $5.00 of my own change. That has to be kept with the changer, and if there is not $5.00 in the carrier, we are not allowed to go to work the next day.

Q. Each driver, then, has on deposit at all of the time $5.00 in change? A. Yes.

Q. How long does it take you to check in when you finish a run, and get your money turned in, and your receipts? A. Well, not more than ten minutes.

Q. You do that on your own time, or on the company's time? A. On my own time.

Q. You get paid—or how do you get paid, or how is your time calculated? From the time you leave the garage or from the time you get on the box? A. I had a regular run that lasted—or I was due at the garage at 2:35 and I got off at 12:20, and I got checked in about 12:20, and that paid me for a full ten hours, at the rate of 40 cents an hour, or $4.00 a day.

Q. You said that you had a regular run at the time you got fired? A. Yes.

Q. Was that considered a good run? A. It was one of the best night runs.

(354) Q. One of the best night runs? A. Yes.

Q. How did you get that? A. We work by seniority list.

Q. What do you mean seniority? A. The oldest men there get the best day runs, and so on up.

Q. You were the oldest, or one of the oldest men; and when did you go to work there? A. Two years ago.

Q. And you were one of the oldest drivers there? A. At night.

Q. Are the day runs more desirable? A. They naturally would be, and it would give you time off at night.

Q. Would you have gotten a day run if you had stayed there, and one were open, would you have taken it, or would you have preferred the night run? A. That all depends. There are some day runs that I wouldn't have.

Q. But you do have a choice, when a run is open, is it posted so that the drivers have a chance to bid for it like you do on the railroads where they bid for runs all of the time? A. They have a work sheet, a little bit (355) larger than a pad, with the run numbers on, with the amount it pays.

You have to go over on the schedule board and figure that up, and figure the kind of equipment that is on it, and take that into consideration.

Q. Then you are allowed to bid for that job, that is, ask for it. A. And the oldest man gets the pick of everything.

Q. And then the next man has a choice, and if he doesn't want it, it drops down? A. Yes.

Q. You say that you have operated trucks, and heavy equipment for several years? A. Yes.

Q. Were you in the Army? A. No.

Q. Were you too young? A. Yes. I will only be 26 tomorrow, sir.

Q. From your own experience as a truck driver, and as a bus driver, which is more difficult to do, day after day? A. A bus.

Q. Why? A. You have to take care of your equipment, and your passengers, and you have to handle your equipment so that you won't jar your passengers or toss (356) them around or have them in a tight place, and with a truck you have a load of sand, or whatever it happens to be, and if you have to stop quick, that is all, and you don't have somebody calling in and say they made a sudden stop.

Q. These are one man buses? A. Yes.

Q. And the operator operates the bus and gives the fares, and handles mail? A. On that one line.

Q. Is there any difficulty about watching the fare box to see that the right fare is put in? A. Not very, except at night. Most of them are not lighted up, and you have to go by the sound of the money.

Q. The fare box isn't lighted up? A. No.

Q. So that you can't see? A. Just the new equipment. You have to light a match to see the reading on the fare box.

Q. Are there different fares charged for different zones? A. Yes, sir.

Q. And as you cross these zones you have to know that you are over the zone and that a new fare arrangement is in force? A. Yes, sir.

(357) Q. So that you would say that it is more difficult to handle buses, one man buses carrying passengers, than it is to handle trucks or similar equipment of about the same horsepower? A. It is. In collecting fares, it is a hard matter, because you can't watch every fare and see the man, and where he sits down, and I put most men on, and then try to catch them and teach them the right fares, and of course there are some that will beat you.

Q. People do try to beat the company? A. And it

is a hard matter, and you have to be on the regular beat a long time, and watch the money.

Q. How do they do that? A. They croud in, down at the terminal, when we are hauling anywhere from $4.00 to $6.00 in 10 or 20 cent fares, which run as high as forty people on one bus.

Q. Do several get on at one place? A. At the 12th Street terminal, yes. We pick up as many as thirty as fast as they can get on.

Q. And does the operator operate the opening and closing of the door, too? A. The new equipment has the air opener, and the old equipment, you have to reach over.

Q. Were you operating a new bus or an old bus? A. A new bus.

(358) Q. When you were fired? A. Yes.

Q. Do some people learn to drive these buses skilfully more quickly than others? A. Oh, yes.

Q. How long was it before you thought that you were a thoroughly competent and skilful bus driver? A. I don't think I am yet.

Q. Why not? A. Well, there are a lot of technicalities, and I try to improve myself all of the time, so that people, in making starts and stops, so that people can't feel the start and stopping.

Q. Is the traffic getting heavier on these streets over which the buses operate? A. Oh, yes.

Q. Is it noticeably heavier, or do you just read that in the papers? Do you know it, as a matter of experience as a driver? A. I have noticed it. I have been a driver since 1922.

Q. Did you drive during this severe cold spell in the winter, when they had snow and ice? A. Yes.

Q. Was it more difficult to drive then, than it had (359) been in previous months? A. Quite a bit.

Q. Did you yourself have more difficulty with the bus you operated? A. Oh, yes.

Q. Was that your fault? A. No, it is a condition of the road.

Q. Did you think it was a result of neglect on the part of the shop men? A. No, sir, I did not.

Q. You did not? A. No, sir.

Q. How long would it take a man to become a thoroughly skilful bus driver? A. Well, I have known

a lot of cases, that, well, in myself, I wouldn't class myself as one.

Q. Do you think you are competent to hold a job? A. The man gave me that privilege, and employed me up to this time.

Q. Did he tell you that you were fired because you were an incompetent driver? A. No, sir.

Q. Did anybody tell you that when you were dismissed? A. No, sir.

By Mr. LYNCH:

(360) Q. Mr. Magaha, did you ever talk to Mr. Giffin? A. I didn't know Mr. Giffin until during the meetings, and I didn't know his name until this trial came up.

Q. You didn't handle any mails yourself? A. No, sir.

Q. Did you give any transfers? A. Yes.

Q. Where did you give transfers? A. People get on the wrong bus, and want to transfer, and they are coming down from Clarendon, and people want to go to Cherrydale, and we give them transfers.

Q. That is very infrequent, isn't it? A. No, I say on the average of four a night.

Q. Four transfers a night? A. Yes.

Q. How many transfers do you handle all night long? A. Well, I don't work all night long.

Q. I mean the run that you work, how many transfers would you issue from that time? A. On the average of six.

Q. Six for the whole run? A. Yes.

Q. This fare box that you had was lighted? A. Yes.

Q. How long had you been operating this new equip-
(361) ment? A. Since it was gotten in.

Q. When was that? A. October.

Q. How much longer would you think it would take before you could classify yourself as a skilful driver?

Mr. BLUM: Objected to.

Mr. LYNCH: I will withdraw it.

I think that is all.

By Mr. HUGHES:

Q. I just have one question: In your pay, you are paid by the day, or the day you work, and not by the week? A. By the day.

CHARLES MAGAHA.

Q. And you got so much a day, isn't it $4.00 a day? A. Yes.

Q. So if you work seven days a week, you are paid seven times four, or $28.00; isn't that so? A. Yes.

Q. If you work six days a week, you are paid six days? A. That is all.

Mr. CARMODY: We will recess now.

(Whereupon, at 2:30 o'clock p. m., the hearing was recessed until tomorrow, Wednesday, March 25th, at 10:00 o'clock a. m.)

(363) THIRD DAY.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

FIFTH REGION.

In the matter of

Washington, Virginia and Maryland Coach Company and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 1079 et al.	Case No. C-63.

Room 407, Denrike Building,
National Labor Relations Board,
Washington, D. C.

Wednesday, March 25, 1936.

The above-entitled matter came on for hearing at 10:00 o'clock a. m., pursuant to adjournment.

Before: John M. Carmody, Member of Board.

Appearances: Jacob Blum, Charlton Ogburn, Arthur Reyman, For the Union.

Robert E. Lynch, Wm. J. Hughes, Jr., For the Company.

(364) PROCEEDINGS.

Mr. CARMODY: Are you ready to proceed?

Mr. BLUM: Yes. I would like to call Mr. Beall.

Whereupon GEORGE W. BEALL was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your full name? A. George W. Beall.

Q. B-E-L-L? A. B-E-A-L-L.

Q. Now, Mr. Beall, by whom were you last employed? A. Washington, Virginia and Maryland Coach Company.

Q. In what capacity? A. Mechanic.

Q. Day shift or night shift? A. Day shift.

Q. And how long had you been working there? A. About three months.

Q. Three months? A. Yes.

Q. Now, were you also a member of the local di-
(365) vision 1079? A. Yes, sir.

Q. When did you join that organization? A. Why, I signed an application about the 22d or 23d of February.

Q. And did you get a membership card? A. I did, yes, sir.

Q. Were you discharged from the employ of the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. When? A. On the evening of March 5th.

Q. By whom were you discharged? A. By Mr. George F. Wilsey.

Q. Will you explain the circumstances of that discharge? A. Well, I had worked all day the day of March 5th, and I was due off at five o'clock that evening, and the job I was on necessitated an extra hour's work, and at 6 o'clock Mr. Wilsey came to the wash room where I was washing up to go home and called me and told me that he wanted me in the stock room, and so I went in the stock room where he had a little desk there for an

office, and he handed me my money in an envelope, and told me that I would have to go, so I asked him why I was being put out, on account of the union, and he said "yes."

(366) Q. What was that question you asked? A. I asked him why it was he was letting me go.

Q. Did you put those words to him? A. Yes.

Q. And his answer was what? A. His answer was yes, and we proceeded to have a talk then, and he wanted to know just why it was that we had gone to join a union without saying anything to him, and he said he felt pretty bad about it, and he said that if we had put it up to him he could have put it over in a better way, and he proceeded to tell me that he had joined a union in the Cadillac factory.

Q. Why? A. I think that is in Detroit; and that it hadn't done him any good and had caused him to lose a very good job, and he didn't see any sense in a union at all; and furthermore, he said, the Old Man would not recognize a union.

Q. Did you know whom he meant by that?

Mr. LYNCH: I object to that.

Mr. BLUM: Do you know who he meant?

Mr. CARMODY: Sustained.

By Mr. BLUM:

Q. Proceed from there. A. We had a lengthy talk.

Q. From the point that "the Old Man wouldn't." A. From then on we started a lengthy talk.

(367) Q. What did he say about the "Old Man"? A. He said the Old Man would not recognize the union.

Q. And was there any further discussion about the union with Mr. Wilsey? A. No, I don't think so, just more or less personal talk.

Mr. BLUM: I think that is all, Mr. Beall.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. What is your first name? A. George.

Q. And where do you live? A. 3591 Eleventh Street, Washington, D. C.

Q. How long have you lived there? A. About a year.

Q. Where did you work before you came to this job? A. Kirby's Service, Clarendon, Virginia.

Q. Kirby's Service? A. Yes.

Q. Is that a service station? A. A garage, Dodge and Plymouth Agency.

Q. You came to these people and asked them for a job, didn't you? A. Yes, I asked Mr. Wilsey.

(368) Q. And asked him for a job? A. Yes.

Q. About three and a half months ago? A. Yes.

Q. From that time on you worked until March 5th? A. Yes.

Q. Who came to you about this union on February 22d, or 23d?

Mr. BLUM: I object to that. It isn't important for the issues in this case who came to him, as far as the union is concerned.

The question involved was whether he was fired because he became a member of the union.

Mr. CARMODY: Sustained.

Mr. LYNCH: Exception.

By Mr. LYNCH:

Q. Did you pay your fee? A. I did.

Q. Did you attend any of the meetings? A. Yes, sir.

Q. Which ones? A. All of them.

Q. Which ones were they? Name them. A. February 24th, and the meeting March 3d.

Q. They are the only two? A. Yes, sir.

(369) Q. Was there a meeting on February 28th, that you know of? A. Not to my knowledge.

Q. Was Mr. Clark at the meeting of February 24th? A. Yes, sir.

Q. Was he there at the meeting on March 3d? A. Yes, sir.

Q. You hadn't known Mr. Wilsey before this occasion, had you? A. Three or four years, yes, sir.

Q. Where had you known him? A. Just by going there in the garage, and being around there, I would see

him in the lunch room, one place and another, and just got to talking with him.

Q. Your acquaintance with him was merely casual, by seeing him in the neighborhood? A. That is right.

Q. You hadn't visited with him at his home? A. No.

Q. He hadn't visited you in your home? A. No.

Q. Were you a mechanic? A. Yes.

Q. And on this day he came to you, and told you to
(370) come to the office, or his desk? A. Yes, sir.

Q. And you did so and he gave you your money and told you you were not needed any longer? A. That is right.

Q. Isn't it a fact that what he said to you was that the reason why you were being let go was because of the way in which you had handled the matter? A. No, sir.

Q. Did you make any note of what he said to you at that time?

Mr. BLUM: I object to that.

Mr. LYNCH: It is proper.

Mr. BLUM: It is not the proper attitude at all. All through this proceeding the cross examination has been done in a bullying manner, and I don't think it is proper. I think that the question can be asked in a more dignified manner.

Mr. CARMODY: The attorney said he was unfamiliar with these labor matters, and I tried to impress upon him that this is not a criminal trial, and it is a labor hearing.

By Mr. LYNCH:

Q. Did you make any note of what was said to you at the time by Mr. Wilsey? A. Only a mental note.

Q. You didn't write it down? A. No.

(371) Q. Who was the first person you told that to afterwards? A. Why, I think Mr. Frederick was the first one.

Q. When did you tell him that? A. I would say four or five minutes after our conversation, Mr. Wilsey's conversation.

Q. Where did you see him? A. I believe I met him out in the front part of the garage.

Q. And you say you believe you did? Did you meet him out there? A. Yes, I did.

Q. And you have no difficulty whatever in recalling everything that was said to you on that occasion? A. Absolutely none.

Q. What was the personal conversation that you had with Mr. Wilsey right after this statement was made to you?

Mr. BLUM: Objected to. That was a personal conversation.

Mr. LYNCH: He said the rest of it was personal.

Mr. BLUM: It has no bearing on this case, and I don't want to hear about it.

Mr. CARMODY: If he remembers, he may answer.

The WITNESS: I will say I don't remember that part of it.

(372) Mr. BLUM: On this personal conversation, can you remember any part of it?

Mr. LYNCH: He is trying to contradict his own witness and his witness has said he doesn't remember that.

Mr. CARMODY: Sustained.

By Mr. BLUM:

Q. And the three months that you worked there, was there any complaint ever made against you by the officials of the company? A. Not to my knowledge.

Q. Did Mr. Wilsey ever have occasion to compliment you on the manner in which you did your work? A. Well, I would say no. He wasn't that type of man.

Q. Who was your immediate superior? A. I would say Mr. Frederick.

Q. Now, on the day that you were fired, was anybody else fired with you, or the same day?

Mr. LYNCH: Unless he has personal knowledge, and he was right there, he can't answer.

Mr. BLUM: Do you know?

A. I didn't see anyone fired.

Mr. BLUM: That is all.

By Mr. CARMODY:

Q. What time of day did Mr. Wilsey send for you? A. It was just about six o'clock in the evening.

(373) Q. What day of the week was that? A. That was on a Thursday, I believe.

Q. Had Mr. Wilsey talked to you about your work that day at all in the garage? A. Mr. Wilsey hadn't spoken more than one or two words to us in the past three or four days, that is, the prior three or four days.

Q. In the garage? A. Yes, sir.

Q. During those three or four days when he spoke those three or four words to you, did he complain about your work? A. Never once have I heard him complain about the work.

Q. He never complained to you about the way you did your work? A. No, sir.

Q. When you went into his office, did you go into his office, that evening, when he sent for you, or when you went in, did you go into his office or some other part of the garage? A. This was in some other part, in the stock room.

Q. In the stock room? A. Yes.

Q. Was he sitting down? A. He was standing at the time.

(374) Q. Was that his desk or his office, is that where you were accustomed to see him? A. No, sir.

Q. Does he have an office out there at the garage? A. Yes, he does.

Q. Was there anybody in the stock room when you came in? A. That I really couldn't say.

Q. How did you know where to go; how did he get word to you? A. He came to me, to the door of the wash room there, and said, "Bill, I want to see you" and he walked on away, and I immediately followed, and I saw him go in the stock room, and so I followed him in.

Q. Were you washing up? A. I just started to.

Q. And he handed you an envelope with your pay in it? A. Right.

Q. Did you check up the money? A. I did.

Q. You were paid up to what time? A. I was paid up to five o'clock that evening, not until six, but to five.

Q. What happened with the other hour's pay that you had coming to you? Did you ever get that? A. I (375) haven't yet, no, sir.

Q. You haven't got that yet? A. No, sir.

Q. And the envelope was made up so that it did not include the pay for the last hour of work that you did that day? A. No, sir, it did not. Before I opened my envelope Mr. Wilsey told me that I had an hour extra coming to me, and when I checked my money I saw that I hadn't been paid for that.

Q. You have not been paid? A. No, sir.

Q. How long ago was that? A. That was the night of March 5th.

Q. Did Mr. Wilsey say that you should come after it or they would send it to you? A. Well, he didn't say either way.

Q. How much would that amount to? A. A fraction less than 40 cents.

Q. Do you live in the city of Washington? A. Yes.

Q. If you paid out the bus fare to get it, and back, how much would you have left if you got that 40 cents? A. I wouldn't have anything left. It would cost me 40 cents for my fare.

(376) By Mr. LYNCH:

Q. Have you, or are you around Clarendon almost every day? A. No, sir.

Q. How long have you lived on 11th Street? A. About a year.

Q. Where would you see Mr. Wilsey when you said that you would see him from time to time? A. Well, three years before moving into Washington, I was a resident of Clarendon, Virginia.

Q. Have you been over to Clarendon since March 5th? A. Yes, once or twice.

Q. And you went right by the garage? A. Yes.

Q. Have you ever made demand on anybody for that extra hour's service? A. Yes.

Q. To whom? A. I went into the office and inquired of Mr. Baxter and I also inquired of Mr. Kaylor, and Mr. Baxter and Mr. Kaylor are both cashiers.

Q. Inquired of what? A. As to who I should see to get my overtime.

Q. What did they say? A. They referred me to Mr. Piper. He is in charge of the time in the shop.

(377) Q. Did you go to see Mr. Piper? A. Mr. Piper happened to be off, and I haven't had a chance to go back since.

Q. But you knew Mr. Piper was in charge of the time in the shop? A. Yes, I knew he was in charge of the time as far as turning it in to the office, but I was under the impression that it had been turned in.

Mr. LYNCH: I will see that he gets his extra money today.

Have you tried to get employment since then? A. Yes, I have on a number of occasions.

Q. All right.

By Mr. BLUM:

Q. Would you prefer to have this job back? A. I would, yes.

Mr. BLUM: That is all.

Mr. CARMODY: How much have you earned since you were discharged, in other work?

The WITNESS: I would say $18.00

By Mr. LYNCH:

Q. Where have you been working, Mr. Beall? A. Just picking up little jobs for myself where I could, that is

(378) automobile repair work.

Q. Working any place, particularly? A. No, sir.

Q. So your salary since you have been off over there has been almost at the same rate as it was when you were over there, isn't that correct?

Mr. BLUM: He hasn't said anything about salary.

Mr. LYNCH: I am asking him.

Mr. BLUM: He hasn't testified about that.

Mr. LYNCH: But what you have earned is about the same?

Mr. CARMODY: Do you mean the hourly rate?

Mr. LYNCH: The hourly rate, or the resulting weekly rate.

By Mr. LYNCH:

Q. Is that correct? A. I never figured it out.

Q. Have you figured out how much you made altogether? A. $18.00 since I have been off.

Q. Since the 6th of March? A. Since the 5th of March.

Q. You worked the 5th? A. I was fired the 5th of March.

Q. You have been down here the last few days in these hearings. A. Yes, sir.

(379) Mr. LYNCH: That is all.

Mr. BLUM: That is all.

(Witness excused.)

Mr. BLUM: I would like to call Mr. Philmore Frederick.

Whereupon PHILMORE WILLIAM FREDERICK was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your full name? A. Philmore William Frederick.

Q. Mr. Frederick, by whom were you last employed? A. Washington, Virginia and Maryland Coach Company.

Q. In what capacity? A. Mechanic's helper.

Q. On the day shift or the night shift? A. I worked day and night both.

Q. What did you work at at the time you were fired, day or night? A. Day.

Q. How long have you been with the company? A. Five years.

PHILMORE WILLIAM FREDERICK.

Q. You are a brother of the other Mr. Frederick who
(380) testified yesterday? A. Yes, sir.

Q. Are you also a member of local division 1079? A. Yes, sir.

Q. When did you join that organization? A. The last of February. I can't tell you exactly what date it was.

Q. Were you fired from the Washington, Virginia, and Maryland Coach Company? A. Yes.

Q. When were you fired? A. March 5th, Thursday morning.

Q. By whom? A. George F. Wilsey.

Q. Did he say anything to you about it? A. He said on the morning I was fired, I had one of the application slips in the office the morning I was fired.

Q. What is that? A. He said that I was first fired because I had one of those union applications in the office. That is what he told me.

Q. Who was it told you that? A. George F. Wilsey, shop foreman.

Mr. BLUM: I want to offer this application into the evidence, and mark it.

Mr. CARMODY: Any objection?

(Exhibit 4 received in evidence).

Mr. HUGHES: There is nothing to show that Mr. Wil-
(381) sey saw it.

Mr. BLUM: Will you repeat that?

The WITNESS: Mr. Wilsey came around and gave me the devil for it, and I went around to the office, and started to work at nine o'clock, and Mr. Wilsey told me that I was fired, and I asked him why, and he said I was in the office with an application, a union application.

Mr. HUGHES: Could we have the reporter read that back, please?

(The last answer of the witness was thereupon read by the reporter.)

Mr. HUGHES: We think he ought to describe what happened. He said he gave him the devil for it.

Mr. BLUM: Can you state how what Mr. Wilsey said to you?

The WITNESS: That morning I was around in the office with a union application and showed it to the fellow there named Kaylor, and Mr. England came in the office and gave me the devil because I had it in there.

Mr. CARMODY: What did Mr. England say when he gave you the devil?

A. He just gave me the devil about it.

Mr. LYNCH: May that go out, his construction of what "giving the devil" means?
(382) Let him say what he said, and then the Board can tell whether he gave him the devil or not.

Mr. CARMODY: There are certain localisms or certain expressions that mean one thing in one area and another in another, and I take it from the appearance and the general character and inflection of voices of these witnesses, they all come from a reasonably close area here, and they have more or less grown up together, and they know what they mean by these localisms perhaps better than I do, or somebody else does.

I don't know what he means by "giving the devil." He may know; but what did he say?

The WITNESS: He just gave me the devil.

Mr. CARMODY: Wait a minute. Did he say, "I am giving you the devil"?

The WITNESS: No, he just told me to put it back in my pocket, because I didn't have any business with a union application with me.

Mr. CARMODY: That is all right.

Mr. BLUM: What was the inflection of his voice? Was it an angry voice, and a loud voice?

The WITNESS: Yes, sir.

By Mr. BLUM:

Q. Now, in the fifteen years that you were employed by the company, did you ever have any complaints about
(383) the manner you were working? A. No, sir.

Q. Were you ever called on the carpet, or given the devil, as you describe it, for your work? A. No, sir.

Q. Did you give any cause for the manner in which you were doing your work, for the firing? A. None.

By Mr. LYNCH:

Q. Mr. Frederick, what date did you say that you joined the union? A. The last part of February. I don't exactly know the date.

Q. And you joined as a result of someone giving you an application? A. No, sir, I just joined on my own accord.

Q. Didn't someone give you an application? A. Yes, but I don't know who it was.

Q. You don't know who it was? A. No, sir.

Q. Would it refresh your recollection, if I could suggest that possibly your brother may have given it to you?

Mr. BLUM: Objected to.

Mr. CARMODY: That is all right.

Mr. FREDERICK: My brother gave it to me.

(384) Mr. CARMODY: He may say that. There is no crime in that.

By Mr. LYNCH:

Q. And your recollection is that your brother did give it to you? A. Yes.

Q. Do you live in your brother's house? A. Yes, sir.

Q. And you necessarily see him at work and you see him at home? A. That is right.

Q. And you know he was holding the meetings of the union there in the house? A. Yes, sir.

Q. And you attended those meetings? A. Yes.

Q. And took part in them? A. Yes, sir.

Q. And on this day of March 5th, you were,—or what time did you go to work? A. At nine o'clock.

Q. And then you came around to the office there and was talking to Mr. Baxter? A. That was before I went to work.

Q. Who is it you were talking to? A. Mr. Kaylor.

(385) Q. And you had one of these applications in your hand? A. Yes.

Q. And you were giving it to Mr. Kaylor? A. No, sir, I didn't give it to him. I just showed it to him.

Q. For the purpose of getting him to sign it? A. I didn't tell him to sign it.

Q. Why did you show it to him? A. I guess that is my privilege.

Q. Oh, certainly, it is your privilege; and had you had a previous talk with Mr. Kaylor about the union? A. No, sir.

Mr. BLUM: I didn't want to clutter up the record, but I want to object to this.

Mr. LYNCH: May I suggest this, Mr. Examiner? After all, in evidence here, they have two clerks there that handle all of the details and money, and if a man is in the office just a few minutes before he goes on duty in the shop, he is taking up the time of one of the men taking up the accounts and money. I submit that we have a right to know it. We have a right to know what England's attitude and condition and demeanor were afterwards as a result of that.

Mr. CARMODY: If Mr. England discharged him because he had an application for the union and was show-

(386) ing it to somebody, that is one thing.

Mr. LYNCH: The point is whether he was in the office there, discussing this matter, or how long he was in there with Mr. Kaylor. I just want to know those facts. I think it is reasonable cross examination.

Mr. HUGHES: It is the misuse of union activities, rather than the use of them. He hasn't any right to solicit people there in the company's offices.

Mr. CARMODY: It is a perfectly natural thing for

people who have been working together for fifteen years to have a little conversation before they go to work in the morning, and it is a perfectly natural thing, and I see nothing unusual or unnatural, whether it is a union application or lodge ticket or baseball ticket. There is nothing unnatural about it.

Mr. BLUM: The objection goes much further than that. The answer filed in this case has stated that these men were not fired because of their union activities, but fired by reason of the fact that they were inefficient, and now Mr. Lynch and Mr. Hughes are departing from this answer, and attempting to prove by this witness that he was fired because he took up the time of other employees in the place.

Mr. CARMODY: They may be attempting to prove your case. I don't know what they are attempting to do. I can't follow it. Frankly, I can't follow it. The
(387) record will show what they are attempting to do.

By Mr. LYNCH:

Q. Mr. Kaylor was in the office? Yes, sir.

Q. He handles the money? A. Yes.

Q. And he was on duty at that time? A. Yes.

Q. You weren't on duty, you were to go on duty in a few minutes? A. Yes.

Q. And you were showing him this application? A. Right.

Q. Had you had any conversation with him about it? A. No, sir.

Q. How long had you been in the office before Mr. England spoke to him? A. I generally go in there. I wasn't there very long, five or ten minutes.

Q. Five or ten minutes? A. Yes.

By Mr. CARMODY:

Q. Were you told when you were discharged, that you were fired because you had talked to this cashier? A. I showed him the application.

(388) Q. Were you discharged because you had talked to this man and taken up his time? A. No, sir.

By Mr. LYNCH:

Q. And you were later discharged that same day? A. That is right, sir.

Q. By Mr. Wilsey, who was the superintendent of the shop? A. Yes, sir.

Mr. CARMODY: How much later that day? A. I was fired at the time I was supposed to go to work, at nine o'clock that morning.

By Mr. LYNCH:

Q. Mr. England told you to put it back in your pocket because you had no business in the office? A. That is right.

Q. And you did that and went out? A. Yes, and I went around to the shop, and stayed there until it was time for me to go to work.

Q. And you know, Mr. Frederick, that he was right when he told you you had no business, isn't that correct? A. No, sir.

Q. You didn't have any business talking to Mr. Kaylor? A. We all go in there and talk to Mr. Kaylor.

Q. Talking about company business? A. No, not (389) about company business.

Q. You are going in there to talk about company business? A. No, sir.

Q. You go in there and talk to him about anything you wanted to? A. That is right.

Q. During hours and after hours, and before hours? A. Well, the only time we go in there is for road call or before work, or after work, or lunch hour.

Q. I am asking now, did you talk to him about other things besides the business of the company? A. Yes.

Q. And how long would you be in there talking to him about these matters? A. Sometimes we go in there and sit around with the drivers, and all.

Mr. CARMODY: Had you ever done that before?

The WITNESS: No, sir.

Mr. BLUM: Had you ever been called down for that?

The WITNESS: No.

By Mr. HUGHES:

Q. By the way, Mr. Frederick, after you were fired, did you complain about it to anybody? A. No, sir.

Q. Did you tell anybody about the reason you were (390) fired? A. No, sir. The man told me to go and get my money and I went and got my money and stayed home.

By Mr. LYNCH:

Q. Have you worked since? A. No, sir.

Q. Have you tried?

Mr. BLUM: Objected to.

Mr. CARMODY: Sustained.

Mr. LYNCH: Exception.

Mr. CARMODY: Did you join the union of your own free will?

The WITNESS: That is right, sir.

Mr. BLUM: That is all, Mr. Frederick.

I would like to call Mr. McDonough.

Whereupon JOSEPH HARRY McDONOUGH was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your name? A. Joseph Harry McDonough.

Q. Mr. McDonough, by whom were you last employed? A. Mr. Arnold.

Q. At the bus company? Yes.

(391) Q. In what capacity were you employed? A. Body man.

Q. And how long had you been working at that job? A. About a year. I had been there almost a year.

Q. Were you also a member of this union that was formed there? A. Yes, sir.

Q. When did you become a member of that union? A. The last few days.

Q. Of when? A. February.

Q. When were you fired? A. On March 5th.

Q. What time did you go to work? A. Eight o'clock in the morning, and I worked until dinner time, and I went to eat my lunch, and I was going back to work, and Mr. Wilsey came out and hollered, "Mac, come here" and I was on my way up there, and he said: "Go up in the office and get it. Your services are through."

Q. Did he say anything else? A. No, sir.

Q. Who did you get your money from? A. Mr. England.

Q. Had anybody else been fired before you on that (392) day, that you know of? A. Miller, in the morning.

Q. Did you know that? A. Yes.

Q. In nearly the year that you worked with the company, had any of the officials of the company ever complained about the manner in which you did your work? A. When I first went there, Mr. Wilsey said something about a little job, but of course it wasn't all of my fault, and there was no more said about it.

Q. How long ago was that? A. The first month I was there.

Q. And since that time have they made any complaints about your work? A. No.

Q. Have they ever had occasion to complain to you on the way you did your work? A. He wouldn't do that.

By Mr. LYNCH:

Q. Mr. McDonough, did you pay your initiation fee? A. I did.

Q. And signed your application? A. Absolutely.

Q. Do you remember a fellow named Giffin who used to be in the shop? A. He never worked in the day (393) time.

Q. Never worked with you? A. No, sir.

Q. You remember when he worked there? A. No, I didn't. I had never seen him. I don't remember seeing him.

Q. You saw him at the meetings, however? A. Yes.

Q. He wasn't working there then, was he? A. No, sir.

Mr. CARMODY: While Mr. Giffin was there, did he

ever ask you to join a union? A. I never saw Mr. Giffin while he was there.

By Mr. LYNCH:

Q. Did he ever ask you afterwards? A. No, sir.

Q. Did he talk to you about the union? A. No, sir.

Q. Who first talked to you about the union?

Mr. BLUM: Objected to.

Mr. CARMODY: That is proper.

The WITNESS: Nobody talked to me. I got wind of it, and of course I don't know whether they trust me or not, but I got wind of it and one guy came to me and asked me what I thought about it.

(394) Q. Who was this one guy? A. Mr. Frederick.

Q. Which Mr. Frederick, the foreman? The day foreman came to you? A. Yes.

Q. He was your boss? A. Yes.

Q. And was he the one that gave you the application? A. Yes; I asked him for it.

Mr. BLUM: Did you say "P. Frederick"?

The WITNESS: No, the big Frederick.

By Mr. BLUM:

Q. The one that was foreman of the day shop gave you the application? A. Yes.

Mr. CARMODY: Did you join of your own free will?

The WITNESS: Absolutely.

By Mr. LYNCH:

Q. How old are you? A. Twenty-seven.

Q. Do you live in Virginia? A. I had been, and up to the present time I haven't lived anywhere, and anywhere I hang my hat is home, right now.

By Mr. HUGHES:

(395) Q. Have you made any application to get back since you were fired? A. No, sir.

Mr. BLUM: Objected to.

Mr. HUGHES: Why isn't that a proper question?

Mr. CARMODY: That is a fair question.

Mr. BLUM: Has the company given you any indication that they would take you back if you applied?

Mr. HUGHES: We object to that.

Mr. CARMODY: Go ahead and answer. It is a balance to the other question.

The WITNESS: Mr. Kaylor and I were talking, and he said if I went and talked to Mr. Arnold, I wouldn't be fired.

He didn't think I would get fired. He said that they all would be fired that was in the union.

Mr. HUGHES: Who said that?

The WITNESS: Mr. Kaylor.

Mr. LYNCH: That is certainly—Mr. Kaylor has never been named with the union.

Mr. CARMODY: He is a starter. You can leave it in.

Mr. LYNCH: Exception.

Mr. CARMODY: You drew this on yourselves.

Mr. LYNCH: We didn't ask the question of what some clerk over there told him.

Mr. CARMODY: You have got to balance your discussion.

(396) By Mr. BLUM:

Q. When did Mr. Kaylor tell you this before you were fired? A. Yes, sir; always during dinner hour, we went in the office to talk to him, or something like that. We were in conversation at different times.

Q. Just what did he tell you at that time? A. He said, "Mac, did you join the union?" and I said, "Yes."

And then he said that he thought everybody that joined the union would be fired, and Mr. Arnold would let them go.

Mr. HUGHES: That is a surmise, a guess or something, on the part of Mr. Kaylor.

Mr. BLUM: It was carried out in practice later.

Mr. CARMODY: A man was discharged because he showed an application to Mr. Kaylor, and Mr. Kaylor has been brought in, and Mr. Kaylor stands in closer relationship to Mr. Arnold than these mechanics did, and I am influenced by the fact that I spent twenty-five years of my life around these shops working, from a timekeeper up to a vice president of a company, and I have been all through it, and these conversations that go on are perfectly normal and natural to me. If you want them, there they are, and if you don't want them, don't ask the questions, because they will come out.

I don't know what they said, but I know what formally goes on around a factory, and an office.

(397) Mr. LYNCH: It so happens that I worked in a shop myself, long hours, too, and I know what goes on, and I know, for instance, when I was assistant to the superintendent of the shop, I talked to mechanics a great deal, and I said things to them, and I certainly couldn't bind the officers of the corporation, or the corporation itself, irrespective of what my surmises might have been.

Mr. CARMODY: I don't think what Mr. Kaylor said binds the corporation, but it is an indication of what goes on, and it is followed by certain events.

Mr. LYNCH: And the facts, taking their own testimony, that they had 59 members, and something like 20 were separated from the service, and actually over two-thirds still remain—that is even though they are in the union.

By Mr. BLUM:

Q. Mr. McDonough, what was the conversation when

he told you to go to Mr. Arnold, and you might be retained? A. He said that he thought a whole lot of men and he hated to see me leave there, and he said that if I went to Mr. Arnold, and talked it over with him, that might make things O. K.

Q. Did he make any suggestions about the union to you? A. No, sir.

By Mr. LYNCH:

(398) Q. When you say he thought a great deal of you, do you mean Mr. Kaylor? A. Yes.

Mr. HUGHES: Did you go to Mr. Arnold?

The WITNESS: No.

Mr. BLUM: I would like to move to amend the complaint in this respect; that Mr. McDonough is referred to as "Mr. McDonald," and I just want to correct the name.

Mr. HUGHES: No objection.

Mr. CARMODY: There is no objection to that.

(Witness excused.)

Mr. BLUM: I would like to call Mr. Lawrence Chase.

Whereupon LAWRENCE J. CHASE, JR., was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Now, Mr. Chase, what is your first name? A. Lawrence Chase.

Q. How do you spell that? A. L-A-W-R-E-N-C-E.

Q. You have to speak so that the stenographer can hear you. A. All right.

(399) Q. By whom were you last employed? A. The Washington, Virginia and Maryland Coach Company.

Q. In what capacity? A. A painter's helper.

Q. How long were you working there? A. A year.
Q. A year? A. Yes.
Q. Day or night? A. Day.
Q. Were you a member of this union that was formed at the shop? A. Yes.
Q. When did you become a member of that union? A. On the 26th of February.
Q. 26th of February? A. Yes.
Q. Were you subsequently fired? A. Yes, sir.
Q. When were you fired? A. The 5th.
Q. Of what? A. 5th of March.
Q. 1936? A. Yes.
(400) Q. By whom were you fired? A. Mr. Wilsey.
Q. Will you state the circumstances under which you were fired? A. He came in the paint shop.
Q. Did you go to work that morning? A. Yes, sir.
Q. What time did you go to work? A. Eight o'clock.
Q. How long did you work? A. Until twelve.
Q. Noon? A. Yes.
Q. Is that your lunch hour? A. Yes.
Q. Did you go to lunch? A. Yes.
Q. Then what happened? A. We were in there touching 137 coach up.
Q. Who came in then? A. Mr. Wilsey came in the paint shop and told us to get our money.
Q. Who is "us"? A. Mr. Gildart and I.
(401) Q. And who else? A. And myself.
Q. The two of you together? A. Yes.

By Mr. CARMODY:

Q. Had you started to work after your lunch period, when he came in? A. Yes, sir.
Q. What time was it? A. One o'clock.
Q. How long had you been working after your lunch hour before Mr. Wilsey came in? A. Well—
Q. Five minutes? A. About five minutes.
Q. Not more? A. No, sir.
Q. He told Gildart and yourself—told you what? A. To go in the office and get our pay.

By Mr. BLUM:

Q. Did he give you any reason why you were fired? A. No, sir.
Q. Did you go and get your pay? A. Yes, sir.
Q. Who gave you your pay? A. Mr. England.

(402) Q. Did he tell you why you were fired? A. No, sir.

Q. In the year that you worked for the company, did they have any cause for complaint about your work at any time? A. No, sir.

Q. Were you ever called up and reprimanded for the manner in which you did your work? A. No, sir.

Q. Did anything occur on that day that would give them reason to fire you? A. No, sir.

Mr. BLUM: That is all.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. Mr. Chase, did you go to the meeting on February 24th? A. Yes, sir.

Q. And then you joined on the 26th? A. Yes.

Q. Do you live in Virginia? A. Yes.

Q. Have you lived there all of your life? A. Yes,
(403) sir.

Q. How old are you? A. Nineteen years of age.

Q. Do you live with your people? A. Yes, sir.

Q. Have you sought employment since you left over there? A. No, sir.

Mr. BLUM: Objected to.

Mr. CARMODY: Sustained.

Mr. LYNCH: May I have an exception?

Mr. CARMODY: Yes.

By Mr. LYNCH:

Q. You didn't talk to Mr. Arnold about this matter at all? A. No, sir.

Q. You didn't ask Mr. Arnold or anyone else for a reinstatement, did you? A. No, sir.

Mr. LYNCH: That is all.

RE-DIRECT EXAMINATION.

By Mr. BLUM:

Q. Did you have any indication from any member of the company or any official of the company that if you had applied for reinstatement you would be taken back? A. No, sir.

Q. You were fired on the 5th? A. Yes.

(404) Q. And today is the 24th. You have been fired for 20 days? A. Yes.

Q. And did you have any reason to believe that if you had applied for reinstatement, you would have been taken back? A. No, sir.

Mr. HUGHES: We object to that.

Mr. CARMODY: Sustained.

Mr. BLUM: That is all.

(Witness excused.)

Mr. BLUM: I would like to call Mr. Crissman.

Whereupon WILLIAM A. CRISSMAN was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Will you give us your name, please? A. William A. Crissman.

Q. By whom were you last employed? A. Washington, Virginia and Maryland Coach Company.

Q. And in what capacity? A. As a driver.

Q. How long have you been working for the com-

(405) pany? A. I worked for them two different times. I only worked for about a year, and I left, but as far as my stripes is concerned, I worked six years and a half.

By the EXAMINER:

Q. How much time intervened in that? A. About seven months.

By Mr. BLUM:

Q. When you left the first time, did you leave voluntarily? A. Yes.

Q. Now, were you a member of this union that was formed at the bus company? A Yes, sir.

Q. When did you join that organization? A. The last week of February; I don't remember the exact date.

Q. This year? A. Yes.

Q. As a driver, what was your route? A. I worked 16th and Quincy Street, to 619 12th Street.

Q. And that is in Arlington? A. Yes.

Q. And you worked at the terminal in the District of Columbia? A. Yes, sir.

Q. What time were you supposed to report for your
(406) run? A. Five fifty-five.

Q. A. M.? A. P. M.

Q. How long did you work? A. I turned in at the garage about 3:15.

Q. In the evening? A. Yes.

Q. Was that a continuous run? A. Yes, sir.

Q. Did you have any time off at all for lunch or anything like that? A. No, sir.

Q. Was your day ended at 3:15? A. Well, if there wasn't some extra work that we were compelled to work at, sometimes.

Q. Did you have this extra work very often? A. Well, not so very often, no, sir. Once in a while we were compelled to do extra work.

Q. And when you had this extra work, how late did you work? A. It all depended on what we worked, and the extra work that I worked, I got off at 3:15, and I had to stay at the garage until 4:45, and then go to 12th Street, and make one trip to West Falls Church and I got in the garage at 6:15.

(407) Q. How long ago was that? A. About a week before, or possibly the same week that I was discharged.

Q. Is that type of duty given as punishment or as a reward? A. It is just extra work, that is all.

Q. Extra work? A. Yes.

Q. Do you have the right to refuse to take it if you want to? A. No, we do not. If there is work, we work.

Q. What was your record with the company with respect to accidents, and complaints? A. Well, so far as I know, it was clear.

WILLIAM A. CRISSMAN.

Q. How many—or have you had many accidents? A. I haven't had any in over two years.

Q. Not an accident in two years? A. Not in the past two years, or more than two years.

Q. Who fired you? A. Mr. England.

Q. Will you explain the circumstances under which you were fired? A. Well, I got off from work on March 4th at 3:15, and when I turned in the cashier told me that Mr. England wanted to see me in the office, and I (408) went in the office, and Mr. England was there, and told me my services were no longer required.

Q. Did you ask him why? A. I did not.

Q. Did he give you any reason? A. I knew why.

Q. Were any other drivers discharged prior to the time that you were? A. I think that there were a couple of others.

Q. Do you know? A. I couldn't say for sure.

Mr. BLUM: That is all—you said you were—why were you discharged?

Mr. LYNCH: We object to that. You can't bind what this man had in his mind on the company, which doesn't say anything to him, I submit.

Mr. CARMODY: Sustained.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. Mr. Crissman, is it or is it not a fact that the men there are usually very anxious for an hour or two extra work? A. There are a few of them that were, but I wasn't one of them.

Q. Generally, the men like extra work and pick up a (409) little extra money. A. Very few of them that do.

Q. They get paid, of course, when they do this extra work? A. They put in about three or four extra hours and get paid for about two hours.

Q. Do they get paid for what they put in for? A. They get paid what they get.

Q. Did you ever complain about it? A. I certainly have.

Q. To whom? A. To the cashier, or I have told him lots of times.

Q. Who is the cashier? A. Mr. Kaylor.

Q. Did you ever take it up with Mr. England or Mr. Arnold? A. I didn't think that it was any use.

Q. Did you ever do it, Mr. Crissman? A. I did not.

Q. When did you last make a complaint to Mr. Kaylor that you were underpaid for the time you actually worked? A. For the last trip that I worked.

Q. When was that? A. I think the week I was discharged.

Q. And you claimed that you worked, let us say, (410) three hours, and they would only give you one hour? A. I was paid 50 cents, and I was there at 3:15 and I stayed there until 4:45, to leave at 5:15; and I got back in the office at 6:15, and I was paid 50 cents for that time.

Q. Did you ever make any complaint to anybody else for any extra work? A. I have told them time and time again that I didn't want extra work.

Q. I asked you if you ever made any complaint to anybody about any time that you weren't paid properly for your extra work? A. Yes.

Q. How many times, Mr. Crissman? A. On numerous occasions.

Q. Would you say as much as once or twice a month? A. Yes.

Q. Did you ever get any satisfaction from those complaints? A. No, indeed.

Q. Did you ever take it up with anybody except Mr. Kaylor? A. No.

Q. You know Mr. England? A. I have talked to Mr. England and told him that I didn't want the trip- (411) pers and didn't want to work them.

Q. At that time, Mr. Crissman, did you ever tell Mr. England that Kaylor wasn't paying you the full amount that he was supposed to pay you? A. He didn't do the paying.

Q. I am asking you if you told Mr. England the fact that you didn't want this extra work, that the extra work that you had done, Kaylor wasn't paying you the full amount? A. Well, that isn't the idea.

Q. I am asking you whether you did it or not.

Mr. CARMODY: You can answer the question whether you did or not; you can answer yes or no.

The WITNESS: I don't remember.

Mr. LYNCH: You don't remember that?

Mr. CARMODY: All right, sir.

By Mr. LYNCH:

Q. Did you eat any lunch between 5:55 in the morning and 3:15 in the afternoon? A. If I had time, yes, sir. We have a 5 minute lay-over at the 12th Street terminal, and if you get in in time you get a sandwich.

Q. You managed generally to have lunch every day, Mr. Crissman? A. I usually got a sandwich some time or other during the day, yes.

Q. Had you sought other employment during the (412) last year and a half?

Mr. BLUM: I object.

Mr. LYNCH: The last year and a half?

Mr. BLUM: I will withdraw it.

The WITNESS: Yes.

By Mr. LYNCH:

Q. And you were unsuccessful in getting it? A. Yes.

Q. You were perfectly satisfied with the job over there? A. The job was all right, but if we got even a little better pay and a little better working hours, it would have been much better.

Q. I suppose that you would work for anybody, wouldn't you, Mr. Crissman? A. Yes.

Q. Are you one of the officers of the union, Mr. Crissman? A. No.

Q. You were active in its formation, weren't you? A. I did what I could to help.

Mr. BLUM: I want to object to that and move it be stricken out, because I haven't examined him on that.

Mr. LYNCH: There is nothing that will hurt about that.

(413) Mr. CARMODY: It doesn't belong in cross examination. It is a fair question at the right time. We will sustain the objection this time.

By Mr. LYNCH:

Q. I didn't get your first name, Mr. Crissman. A. William.

Q. And you reside where? A. At 1746 North Rhodes Street, Clarendon, Virginia.

Q. How long have you lived there? A. Since October 16th.

Q. Last year? A. Yes.

Mr. LYNCH: All right. That is all.

RE-DIRECT EXAMINATION.

By Mr. BLUM:

Q. Did you move out there at the request of Mr. Arnold? A. I was living in Falls Church, and I moved to Arlington County.

Mr. BLUM: That is all.

By Mr. CARMODY:

Q. Just a moment. How long have you driven buses? A. Since the first employment with Mr. Arnold.

Q. How long is that? A. Six years and a half ago.

Q. Were you a bus driver when you went there?

(414) A. I learned to drive there. That is, I learned to drive buses, but I had been driving automobiles and trucks before.

Q. Is there still in use some of the bus equipment that was there when you went to work? A. Yes, sir.

Q. On the road? A. Yes.

Q. And there is also in use some new equipment? A. Yes, sir.

Q. Were you driving one of the old or one of the new buses? A. I was driving one about a year old, I think it was.

Q. Did you have what was considered a good route from a seniority point of view? A. Well, I could have gotten better, but it is day work, and considered good work, but I could have gotten better possibly in a short while.

Q. Is this one of the best day routes? A. It is not one of the best.

Q. Why didn't you have one of the best? A. I wasn't old enough to get a better one.

Q. There were men who had been there longer than six or seven years that you were there, who had better (415) routes? A. Yes, sir.

Q. Do you know, of your own knowledge, whether, when the union has a contract with the transportation company, that it does have something to say about the schedules that the men run, and the arrangement of schedules? A. Yes, sir, they do.

Q. Do you know that of your own knowledge? A. Yes, sir.

Q. This overtime pay, that you speak of, was that a straight time, or time and a half basis? A. That was on straight time.

Q. Straight time? A. Yes.

Q. All overtime? A. Yes.

Q. How many days a week did you run? A. Well, we were supposed to run seven days, but I lost one day every week.

Q. You had Sunday off? A. My wife works, and she was off on Sunday, and I would be off on Sunday.

Q. Are there extra drivers, and is there an extra board at the garage or the terminal, with the names of spare drivers on? A. Yes.

(416) Q. And when a man is off, then a spare driver gets that time? A. That is right.

Mr. CARMODY: All right.

By Mr. LYNCH:

Q. They have many spare drivers out there, don't they, Mr. Crissman? A. I couldn't say how many they have.

(Witness excused.)

Mr. BLUM: I would like to call Mr. West.

Whereupon WILLIAM H. WEST was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Now, Mr. West, what is your full name? A. William H. West.

Q. By whom were you last employed? A. Washington, Virginia and Maryland Coach Company.

Q. How long were you employed by them? A. About two years and eight months.

Q. In what capacity? A. Bus driver.

(417) Q. Day or night? A. Night.

Q. Were you a member of the union that was formed at the bus company? A. Yes.

Q. Were you an officer of that union? A. Yes.

Q. What officer? A. Financial secretary.

Q. What was your route as a bus driver? A. From 619 12th Street, through Wilson Boulevard, through Clarendon and Ballston to East Falls Church and Hillwood.

Q. Now, what time did you report for work?

Mr. LYNCH: We object to this, may it please the Examiner. I personally have waited all through the last witness, Crissman, to see what relevancy it would have, but I could see none, and now assume that the union here wishes to take this matter to court, or that the company should be required to take it to court, we have a large and expensive record which is an expensive thing to print, and I don't mind saying to the Examiner that this company is not a strong financial company, and we aren't in the position to wage long legal and expensive court battles like some companies can, and I think that (418) evidence which is not strictly admissable, on what route they took, or what time they left, should not be in the record.

Mr. BLUM: You have waited until the last driver got on the stand to make that objection.

Mr. HUGHES: We move to strike it all out.

Mr. BLUM: We submit that it is proper testimony.

Mr. LYNCH: You mean to say you have been getting evidence which you knew was wrong all of the time.

Mr. BLUM: This bickering by us across the table has been building up the evidence much more than the testimony.

Mr. CARMODY: The Board will want that information, perhaps, and there may be many reasons why they will want to know what time these men started and what time they quit, and what time they got their pay, and so forth, and that is something that should stand. That is a short part of the record.

Mr. HUGHES: We except.

By Mr. BLUM:

Q. What time did you report for work? A. Five minutes after twelve.

Q. In the afternoon? A. Yes.

Q. Until what time did you work? A. That would (419) range from ten minutes after twelve to twenty-five minutes after twelve.

Q. In the morning? A. At night; or the following morning.

Q. Did you work continuously all of that time, or did you have any lay-over? A. We had three lay-overs during rush hours, ranging from ten to twenty minutes apiece.

Q. Where did they occur? A. At Hillwood.

Q. At Hillwood? A. Yes.

Q. On three separate trips? A. Three trips in a line, yes.

Q. Now, were you fired from the employ of the Washington, Virginia and Maryland Coach Company? A. Yes.

Q. On what date? A. March 4th.

Q. By whom were you fired? A. Mr. England.

Q. Will you state the circumstances under which you were fired? A. I reported for work at two o'clock and was told by the cashier that I was wanted in the office, and I went in the office and Mr. England asked (420) me how I felt, and I told him "fine" and he said, "Your services are no longer required; take your traps, turn them in to the company right away"—and I did.

Q. Did he give you any reason as to why you were fired? A. No, sir.

Q. Had any other drivers been fired prior to that time? A. I was the first man fired.

Q. Were you the first man? A. Yes.

Q. In all of the time that you were in the employ of the company, did they have any cause to complain or bring you in, in order to reprimand you? A. I have, yes, sir, on one or two occasions, for passing passengers on the road.

Q. When was the last time? A. I really don't know.

Q. Has it been recently? A. Quite a ways back.

Q. Have you had many accidents? A. I judge about —well, I really don't know. It has been three or four, in the three years I have been there.

Q. When was the last one? A. Oh, I can't say.

(421) Q. Recently? A. It is not within six or seven months.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. Mr. West, when were you elected financial secretary? A. In a meeting on March 24th, I believe.

Mr. CARMODY: February?

The WITNESS: Yes.

Mr. LYNCH: That is all.

(Witness excused.)

Mr. BLUM: I would like to call Mr. Smith.

Whereupon ROBERT T. SMITH was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your full name? A. Robert T. Smith.

Q. Mr. Smith, by whom were you last employed? A. The Washington, Virginia and Maryland Coach Company.

Q. And in what capacity were you employed? A. Service man.

(422) Q. Day or night? A. Night.

Q. How long had you been working for the company? A. Three years.

Q. Three years? A. Yes.

Q. Were you also a member of the union in this case? A. Yes.

Q. When did you become a member of that union? A. The 26th of February.

Q. Were you subsequently fired from the employ of the Washington, Maryland and Virginia Company? A. By Mr. Wilsey, yes.

Q. On what date were you fired? A. On March 6th.

Q. By whom were you fired? A. George F. Wilsey.

Q. Will you explain the circumstances under which you were fired? A. Well, I had worked all night, got off at six o'clock.

Q. The next morning? A. Yes, and I was cleaning up, fixing to go home, and Mr. Wilsey came to the washing room and kind of pushed me in the ribs, and said, "Around front, Smith, to the office". So I said, "O.
(423) K.", and I went around and Mr. England had my pay made out, and a slip he wanted me to sign, for receive my money up to that date, and I signed it, and I said, Mr. England, what are you firing me for?" and he said, "Smith, I am not firing you. Mr. Wilsey is firing you"; and I said, "You needn't play like you don't know what it is all about", and he said, "Yes, I know what it is about", and he said, "You guys started something and I got ahold of it before it went far enough to amount to anything", and he said "if it had gone on it might have been too bad". That was all that was said.

Q. Did you leave immediately after that? A. Yes.

Q. Now, in the three years that you worked for the company, did they ever have any occasion to bring you up for the work that you were doing? A. One time Mr. Wilsey came over to the gas pump, I believe, and mentioned to me about a bus running out of gas, and the bus was 135, and I said, "Well, Mr. England, the bus just came in, I suppose, one of the mechanics went out to get the bus, and I wasn't on the road at that time, and a greaser carried the bus on the road, and he didn't know whether it was serviced or not, and that was usual

for us to do, you see, to get a bus on the road as quickly as we could, when a road call came in, to save any de-
(424) lays, and I told him I didn't know about the bus, whether it had run a tripper or all day.

Q. How long ago was that complaint made? A. I would judge six months ago.

Q. Since that time you continued working for the company? A. Yes.

Mr. CARMODY: Did Mr. England or Mr. Wilsey tell you that he discharged you for that? A. No, sir.

Mr. BLUM: That is all.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. Mr. Smith, who was present when Mr. England made that statement to you? A. Him and myself.

Q. No one else? A. No, sir.

Mr. HUGHES: Did Mr. Wilsey make any statement?

The WITNESS: No, sir.

Mr. LYNCH: That is all.

Mr. CARMODY: I have one question I want to ask, there.

By Mr. CARMODY:

Q. Did you frequently see Mr. Wilsey in the wash room at six o'clock in the morning when you were
(425) quitting? A. Yes, sir.

Q. What time did he come to work usually in the morning? A. He usually came in between eight o'clock and night.

Q. When? A. In the morning.

Q. How did you know? You worked nights. A. He was there at five o'clock that morning.

Q. I say, was he there at five o'clock every morning? A. That was something unusual.

Q. That is what I asked you, whether it was usual. A. No.

Q. It was something unusual for Mr. Wilsey to be there when you quit work at six o'clock? A. Yes.

Q. Was it unusual for him to be around the garage after midnight? A. I don't believe I ever saw him in there but one time.

Q. That is all. Had you ever seen Mr. England at six o'clock in the morning before? A. Yes.

Q. In the office? A. Yes.

(426) Q. He came out to the garage at six o'clock in the morning? A. If there was snow or ice on the road, he would come out to see if everything was going along all right.

Q. So you were not surprised to see him there? A. No, sir.

(Witness excused)

Mr. LYNCH: When we said this morning we would run through the day, Mr. Blum said he had three more witnesses, and he has used about six. I don't know whether we are going to get our case on today.

Mr. CARMODY: This is the first time we have had any speed.

Mr. LYNCH: I think I ought to be complimented on that.

Mr. BLUM: I think I have about four or five witnesses.

Mr. CARMODY: Let us put them on as rapidly as possible.

Whereupon GEORGE LOUIS BIRCH was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your full name? A. George Louis Birch.

(427) Q. By whom were you last employed? A. The Washington, Virginia and Maryland Coach Company.

Q. In what capacity? A. Mechanic.

Q. Day or night? A. Day.

Q. How long have you been working for the company? A. Seven years and seven months.

Q. Were you a member of the union that was formed up there? A. Yes.

Q. In question in this case? A. Yes.

Q. When did you become a member of that union? A. I think I signed the application, and paid my $2.00 on the 24th of February.

Q. Were you subsequently discharged from the employ of the Washington, Virginia and Maryland Coach Company? A. Yes.

Q. When were you discharged? A. March 5th.

Q. By whom? A. George F. Wilsey.

Q. And will you describe the circumstances of that discharge? A. I was working on bus 127 about ten min-
(428) utes to seven and he hollered—

Mr. CARMODY: When?

The WITNESS: In the p. m.; and he hollered out and said, "There is a letter in the office for you", and he laughed and went in the stock room, and so about five minutes to seven I went around there and Mr. England was talking to Mr. Baxter, and Mr. England said, "What do you want?" and I said, "Mr. Wilsey said I got a letter in here", and he laughed and said, "What letter?" Then he went back in the office, and I walked back with him, and he handed me a piece of paper, and he said, "Birch, sign this, and see if your money is all right", and he was sitting there, and he said, "Birch, what does your wife think of this mess, and your losing your job?" I said, "She thinks the same way I do, it is a good thing, so we will stand in it".

By Mr. LYNCH:

Q. Did you get your money? A. Yes, sir.

Q. Did you ask him why you lost your job? A. No, sir, he told me that; I understood.

Q. In the seven and a half years you were working for the company, were you ever called in and reprimanded for your work? A. Not one time.

(429) Q. Not one time? A. There might have been a few occasions, when I was starting in, by Mr. Wilsey, who would tell me about it, but there was nothing said much about it.

Q. Did anything happen recently that would cause them to fire you for inefficiency, or incompetency? A. Not as I know of.

Mr. LYNCH: That is all.

(After a pause.)

By Mr. LYNCH:

Q. Your wife works for Mr. England, doesn't she? A. She works for Mrs. England, and she runs the lunch room at the 12th Street terminal.

Q. And she still works there? A. That is right.

Q. Are you working now, Mr. Birch? A. No, sir.

Q. Have you tried to get work? A. I have.

Q. And Mr. England asked you what you thought your wife would think about the fact of your losing your job? A. That is what I said.

Q. That was all that was said? A. That is right.

Mr. LYNCH: That is all.

(430) Mr. BLUM: What was the statement that you made before in direct examination about the "mess"?

Mr. LYNCH: If it is there, it is in the record.

Mr. BLUM: I want to hear it.

Mr. LYNCH: I object to you hearing it.

Mr. BLUM: I would like to call Mr. Atwell.

Whereupon MR. JAMES L. ATWELL was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Now, Mr. Atwell, what is your full name? A. James L. Atwell.

Q. By whom were you last employed? A. Washington, Virginia and Maryland Coach Company.

Q. In what capacity? A. Greaser, bus greaser.

Q. Did you work day or night? A. Night.

Q. How long have you been working for the company? A. Seven years this first coming May. I don't know what date in May it was. It was seven years.

Q. Were you also a member of this union? A. Yes.

(431) Q. In question in the case? A. I was.

Q. When did you become a member of that union? A. The 26th of February.

Q. Of this year? A. Yes.

Q. Were you subsequently discharged from the employ of the Washington, Virginia and Maryland Coach Company? A. I absolutely was.

Q. When were you discharged? A. Discharged on March 6th.

Q. By whom? A. Mr. Wilsey.

Q. Will you explain the circumstances of your discharge? A. I was down in the pit working, and I come out of the pit and Mr. Wilsey said, "Atwell, what time did you go off?" and I said, "Seven o'clock in the morning," and he said, "Well, you are going to get it, too. You might as well go around at seven o'clock and get your money," and I said, "All right, sir," and I went around, it might have been a few minutes before seven, I wouldn't say for sure, and I went around and walked in the office, and Mr. England handed me a slip and told me to sign it, and I had never signed a slip, and I didn't understand what Mr. England said about the slip, and I came back later, and I didn't understand the

(432) slip, and I told him I would come back and sign the slip later, and just then Mr. England said. "Jim, you have kept your work up good, and we never had any trouble with you," and I said, "Mr. England, I have tried to do my work right and I have tried to do it good," and then I went back on out in the shop.

Q. Did you ask Mr. England why you were discharged? A. I did.

Q. What did he say? A. He said, just I went to the meetings, and I said, I went to the meetings on my lunch hour, and I thought that I had a privilege to go where I pleased on my lunch hour.

Q. And what did he say? A. And he said I had no right to go to the meetings, and he absolutely told me I was fired because I went to the meetings.

Q. Did he say what meetings? A. He said because I had gone to the union.

Q. Are they the words he used? A. Absolutely.

Q. Now, in the seven years or nearly seven years that you have been working for the company, have you ever been reprimanded for your work? A. I have so.

Q. How long ago was the last time? A. Well, Mr. (433) Harmon down there, my night foreman, of course sometimes little things that needed a little grease he would suggest that that be done, or he would tell me to change the oil, and of course he gets a report on that, and the report comes out of a bus needing gas, and he said, "You had better change the oil in that bus, and if it is bad, pull it out."

Q. At the time you were being fired, Mr. England was complimenting you on your work; is that true? A. No.

Well, I said I went in there, and I don't know whether it was a few minutes to seven, or after seven.

Mr. CARMODY: I don't think some of these words are understood; "previously" and "complimented" and "reprimanded" and so forth; and "subsequently." I think that if we get down to shop terms here a little bit that these men will understand the matter.

Mr. LYNCH: Maybe he doesn't know what those shop terms are that we know.

By Mr. BLUM:

Q. If I understand your testimony correctly, at the time you were fired, Mr. England was paying you off and telling you how good your work was? A. Absolutely. That is correct.

CROSS EXAMINATION.

(434) By Mr. HUGHES:

Q. Mr. Atwell, you say that you attended those meetings? A. I did.

Q. How many were there? A. I attended one meeting.

Q. How many were there? A. I don't know.

Q. How many would you say? A. I would say around twenty or maybe more.

Q. Maybe more? A. Yes.

Q. Do you happen to know that all of those who at-

tended those meetings were fired? A. I don't say for all of them, but there were some of them fired.

Mr. HUGHES: That is all.

By Mr. LYNCH:

Q. And was Harmon around there that night at the meeting? A. Mr. Harmon went to the meeting at twelve o'clock. That was his lunch hour.

Q. Did you see Mr. Harmon at the meeting? A. No, sir, I did not.

(435) Q. But all of the other men went to the meeting at one time, didn't they? A. Yes, sir.

Q. So there was only one person in the garage for a period of an hour, and that was Mr. Harmon? The Foreman? A. And there was no buses there, and the buses were all in.

Q. They were all in then, and no buses running in the garage at twelve o'clock? A. Yes.

Q. What about 12:30 or a quarter to one? A. There was a man who took his place when he went out.

Q. Who was he? A. Mr. Miller was there.

Q. Mr. who? A. Let me see. I don't remember now who was there.

Q. Well— A. Well, if Mr. Harmon is out, you see, he has a mechanic come on at nine o'clock, and he comes on at nine, and he always looks out after the phone, and we always try to get them back in if they break down.

Q. When you fellows were out at lunch, over at the meeting, and Mr. Harmon was there alone, if a call came in on an emergency, Mr. Harmon would have to go out (436) on that, and if there was nobody there around the shop, eating their lunch, he couldn't get them, could he?

Mr. CARMODY: If everybody went home for lunch, what would happen, if they went home? Everybody goes out and goes to lunch.

The WITNESS: There would be nobody there.

By Mr. LYNCH:

Q. They don't go home, but they stay at the shop and get their lunch? A. Not all of the time. Most of them do.

Q. Most of them do? A. Yes.

Mr. CARMODY: Do they do that so that, on instructions from the company to be there on the lunch hour? A. No, sir.

By Mr. CARMODY:

Q. Were you instructed to be in the shop during lunch hour, ready for a call? A. No, sir.

Q. Did you have an understanding that that was your lunch hour? A. Absolutely, that is my lunch hour.

Q. Was it your understanding that you might go where you please on lunch hour, and eat your lunch where you pleased? A. Yes, sir.

(437) By Mr. HUGHES:

Q. By the way, Mr. Atwell, was anybody else present when you were told why you were fired? A. Yes.

Q. Who? A. Mr. Arnold, Mr. Joseph Arnold was in the office.

Q. Yes. Did he say anything? A. I don't remember whether he did or not. He might have said something.

Q. You said you joined it in February? A. February 24th.

Q. At the meeting? A. No, sir.

Q. Well, before the meeting? A. I certainly did, not before the meeting—they had two meetings, and if I ain't mistaken they had two meetings before I went there, but the meetings was going on when I joined.

Q. You weren't one of the prime movers of that union were you?

Mr. BLUM: Objected to.

Mr. CARMODY: Sustained.

You can ask him whether he is a member of the union, but whether he is a prime mover is of no importance here. This question is whether or not these men (438) were discharged because they joined a union, not whether they were prime movers in the union, or organizers in it, or what.

Mr. HUGHES: Let me explain, just for the purposes of the record—

Mr. CARMODY: Let us save the record and see what goes on.

Mr. HUGHES: This is very important, and I want to have this on the record.

Mr. LYNCH: The Examiner was unwilling to permit respondent's counsel to state the reason for the question and the answer, and an exception was reserved.

Mr. BLUM: I move that be stricken out.

Mr. CARMODY: Strike it out.

Mr. LYNCH: Exception.

May I say that there are cases after cases in the courts, and this provides for appeals to the courts, and the courts say that you have to state your reason for your propounding a question or the reasons for your objections, and that is our purpose, may it please the Examiner, and that is the only reason we are asking this question.

Mr. CARMODY: We would never get through with this simple hearing. I think that I have already done a great deal more than either judges or examiners do, to give the reasons why I have admitted or I have denied certain questions and I have gone along with you, be-
(439) cause I know this is new practice, and everybody isn't familiar with it, you see, and lawyers aren't familiar with it, and it is not their fault because it is new, new administrative procedure, but on the whole question, all of you are familiar with the Texas and New Orleans case, which certainly has a bearing on this.

You are all familiar with that; all lawyers are everywhere.

Mr. HUGHES: I am familiar with it and I went into it and in great detail.

That is all.

Exception.

Mr. CARMODY: The exception is granted.

Mr. BLUM: I would like to call Mr. Gildart.

Mr. CARMODY: Is it necessary to put in all of this accumulative evidence?

Mr. BLUM: It is only for the purpose of acquainting the record with the names and the number of men that have been discharged. That is the only purpose it is showing now.

Mr. HUGHES: There isn't any way to shorten it in that respect, because under the Act it is possible that this Board may decree the reinstatement of some of these men and it might be moved in that regard some way by whether they have jobs or haven't, or what they (440) have done, and so forth, and I think that they have all got to be called.

Mr. CARMODY: The Examiner is perfectly willing to hear all of this evidence, but there are certain accumulative things that we might stipulate; if we have only got two more, we can finish that.

Whereupon JOHN HENRY DOVE was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Give your full name to the reporter. A. John Dove.

Q. Mr. Dove, were you employed by the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. In what capacity? A. Cleaner.

Q. How long were you working for the company? A. About thirty days.

Q. Were you on the day or night shift? A. Night shift.

Q. Were you a member of this union in question in this case? A. Yes, sir.

(441) Q. When did you become a member of that union? A. I think February 26th, if I remember correctly.

Q. And some time after that date were you discharged from the company? A. On March 6th.

Q. By whom? A. Mr. Wilsey. George Wilsey.

Q. Did he discharge you by yourself or was anybody with you? A. Three cleaners.

Q. Who were the other two? A. Moore, and Garrison, and Dove.

Q. Did they discharge you all together? A. He discharged all together, and he called off our names and said to go to the office and get our money.

Q. Did you go to the office? Did he give any reason? A. Yes.

CROSS EXAMINATION.

By Mr. HUGHES:

Q. When did you join the union? A. February 26th,—I am not sure.

Q. And you only attended one meeting? A. Yes.

Q. Did anybody ever tell you not to join the union? A. No, they didn't tell me to join.

(442) Mr. HUGHES: That is all.

Mr. BLUM: I just notice that this man is not in the complaint, and I want to amend the complaint to put this man's name in.

Mr. LYNCH: We don't mind changes.

We object to it.

Mr. BLUM: Since the complaint may be amended at any time, Mr. Examiner, I would like to have the complaint amended adding Mr. Dove's name to it.

Mr. CARMODY: Will you do this: At recess, will you write out the form of amendment and show it to counsel, and if counsel then objects we will take up the ques-

tion of amendment in a more formal way, if it is necessary to cover this person.

Mr. HUGHES: I understand, Mr. Examiner, that this man is simply in the same position as the other twenty, and I don't see how the complaint would be amended in any other manner than by just sticking the man's name in, so we might as well face it now and get it over with.

Mr. CARMODY: You are agreeing that it shall be done?

Mr. HUGHES: I object to it being done at all.

Mr. CARMODY: The rules provide for the amendment so that the amendment will be made, but it is just a question of how it will be made, whether in this process of stipulation here or by formal amendment, and (443) proper formal process. That is all the question.

Mr. REYMAN: Mr. Examiner, if necessary, I will file a charge on behalf of Mr. Dove, today, and have it here at noon, and ask that he be put on at the end of the hearing and the hearing on that charge be combined with this, and of course it is within the discretion of the Board to deny that but I will file the charge on behalf of Mr. Dove, and if his complaint is heard today, or if the Board issues a complaint on it, or whatever happens to it—

Mr. CARMODY: It would seem wholly unnecessary to go through the process of having an entirely new hearing for the sake of taking care of one additional complainant. If counsel insists on it, I shall take counsel of our own general counsel with respect to interpretation of the rules. I am like other people; I don't know everything. I want to be fair and also want to be guided by due process here, as far as it is established under the rules and regulations. Everybody is entitled to all of the advantages that the rules and regulations give, all counsel, and all parties, and we want them to have it.

Let that matter rest until recess, and I will ask counsel if they won't get together and discuss that par-

ticular thing, and if they can't agree then we will do something else.

Mr. HUGHES: I have one more question I would like to ask this person.

(444) Mr. LYNCH: We haven't asked this man.

Mr. HUGHES: I thought he was in one—

Mr. LYNCH: May Mr. Dove's testimony be stricken, and then we can decide what we are going to do, and we will bring him back.

Mr. CARMODY: I don't see any reason why it should be stricken. He is a witness, and the fact that he is not a complainant doesn't mean that he can't be a witness.

Mr. LYNCH: That is all right.

Whereupon JOSEPH A. GARRISON was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Give your full name to the reporter. A. Joseph A. Garrison.

Q. Mr. Garrison, by whom were you last employed? A. Washington, Virginia and Maryland Coach Company.

Q. In what capacity? A. I was a bus washer.

Q. And how long have you been working for the company? A. Two years.

Q. Working day or night? A. Night shift.

(445) Q. Were you also a member of this union in question in this case? A. Yes, sir.

Q. When did you join that union? A. The last week in February.

Q. After you had joined that union, or some time after that, were you fired by the Washington, Virginia and Maryland Coach Company? A. March 6th.

Q. March 6th, of 1936? A. Yes.

Q. By whom? By whom were you fired? A. Mr. Wilsey called three names off at the time and one of those was mine.

Q. What were the other two? A. Dove and Moore.

Q. Was that the man who just testified? A. Yes, sir.

Q. Did he give you any reason as to why you were fired? A. No, sir.

Q. Did you ask for any? A. Just to get our money at seven o'clock.

Q. Did you ask him for any reason? A. No, sir.

(446) Q. In the two years that you worked for the company, have you ever been called on the carpet for some infraction of rules? A. Well, at times we had been taken off our jobs of cleaning buses, and repairing skid chains, and we were asked why the buses were dirty, and we told them we couldn't do two jobs at once, and that was about all.

Q. How long ago was the last time? A. The last time we had a heavy snow, the buses had to be unwashed because we put on skid chains, to work on repairing skid chains, and we couldn't wash buses and repair skid chains too.

Q. Just before you were fired, a week or two weeks prior to that time, had you received any complaints from any of the officials of the company, about the cleanliness of the buses? A. No, sir.

Mr. BLUM: I think that is all.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. What was your answer? A. No, sir.

Mr. HUGHES: Is he a complainant, Mr. Blum?

Mr. BLUM: Yes.

By Mr. HUGHES:

(447) Q. When did you join the union? A. In the last week in February.

Q. Did you try to get anybody else to join it?

Mr. BLUM: Objected to.

Mr. CARMODY: Let him answer.

Did you try to persuade anybody else to join?

Mr. HUGHES: Yes.

The WITNESS: No, sir.

By Mr. HUGHES:

Q. Were you an officer of the union? A. No, sir.

Mr. HUGHES: That is all.

Mr. BLUM: That is all.

(Witness Excused.)

Mr. BLUM: I would like to call Mr. Moore.

Whereupon EVERETT MOORE was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Give your full name to the reporter. A. Everett F. Moore.

Q. Now, Mr. Moore, by whom were you last employed? A. Joe Arnold—I mean Joe Harmon.

(448) Q. Where? A. Washington, Virginia and Maryland Coach Company.

Q. Were you employed by the company or by Harmon?

Mr. CARMODY: Who paid your salary?

The WITNESS: Who paid me?

Mr. BLUM: Yes.

The WITNESS: Mr. England.

Mr. LYNCH: We of course admit that he was paid by somebody for the company.

Mr. BLUM: That is all right.

Mr. LYNCH: How old are you, son?

The WITNESS: Eighteen.

Mr. LYNCH: He doesn't understand corporate entities or labor unions either.

Mr. BLUM: I move that that last statement be stricken out.

Mr. CARMODY: Strike it out of the record.

By Mr. BLUM:

Q. How long have you been working for the company? A. A year and two months.

Q. In what capacity? A. Bus washer.

Q. Day or night? Are you the Moore that Mr. Garrison and Mr. Dove referred to? A. Yes.

(449)

Q. Were you a member of this union? A. Yes.

Q. When did you become a member of the union? A. About the 26th of February.

Q. Some time after that you were fired? A. Yes, sir.

Q. By whom? A. George F. Wilsey.

Q. Was your firing in the manner described by Mr. Dove and Mr. Garrison? A. It was.

Q. And a year and a half that you worked for the company—did they ever have cause to complain about your work? A. They never did take me around to the office, no.

Q. Did any of the officials of the company ever complain to you that you weren't keeping the buses properly cleaned? A. A time or two Mr. England mentioned about them being dirty, or whenever the snow was on the ground, and they had to work on the chains.

Q. When was the last time that happened? A. I guess about three weeks before I was fired.

CROSS EXAMINATION.

By Mr. LYNCH:

(450)

Q. How long were you working there, Mr. Moore, altogether? A. About a year and two months.

Q. A year and two months? A. Yes.

Q. And your principal duties were as a cleaner of buses? A. Yes.

Q. A bus washer? A. Yes.

Q. You say you joined the union on February 26th, is that correct? A. I guess about that time.

Q. You don't remember the exact date, do you? A. No.

Q. And do you remember the person who spoke to you about it at the union first? A. My brother-in-law, Robert Smith.

Q. And he works there also, doesn't he? A. Yes, sir.

Q. And he gave you your application, and did you pay your $2.00? A. Yes.

Q. And asked you to become a member of the union? A. Yes.

Q. And you did that because your brother-in-law (451) asked you? A. No.

Q. Did you understand what the union was about? A. Yes.

Q. Did you attend these meetings? A. One.

Q. Which meeting was that? A. I don't know what date it was. It was the date we received the charter.

Q. You were there at that meeting? A. Yes.

Q. And you weren't an officer of the union, were you? A. No, sir.

Q. And you took no part in it except that you became a member? A. That is right.

Q. You didn't persuade anybody else to join? A. No.

Q. What time did you go to the meeting? A. One o'clock, on my lunch hour.

Q. What time did you get back? A. About ten minutes before two.

Q. And did you eat your lunch going up the road? A. I didn't eat anything.

Q. I see; and what time did you have dinner be- (452) fore, or what time did you have something to eat before that?

Mr. BLUM: That has nothing to do with the case.

Mr. CARMODY: Let us go ahead.

By Mr. LYNCH:

Q. Did you have dinner before you went to work? A. Yes.

Q. What time was that? A. I guess about five or six o'clock.

Q. In the afternoon? A. Yes.

Q. And so you didn't have anything to eat until the next morning? A. No.

Q. And you were working all night? A. Sure.

Mr. CARMODY: Just a moment.

By Mr. CARMODY:

Q. Did you see Joe Arnold at that meeting? A. Yes.

Q. Did you know him? A. Yes.

Q. Does he know you? A. I guess he does.

Q. He was at the meeting? A. Yes.

(453) By Mr. HUGHES:

Q. Did you recognize him as Joe Arnold? A. Yes.

Q. Have you got a job now? A. No.

Q. Did you try to get one? A. No.

Q. Did anybody tell you not to try to get one? A. No.

Mr. BLUM: I object.

Mr. HUGHES: That is a perfectly reasonable question.

Mr. BLUM: I say it is not reasonable, and I object to that.

Mr. CARMODY: Sustained.

Mr. LYNCH: Exception.

That is all.

(Witness Excused.)

Whereupon CLYDE J. McCAULLEY was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your full name? A. Clyde J. McCaulley.

(454) Q. By whom were you last employed? A. Washington, Virginia and Maryland Coach Company.

Q. In what capacity? A. Mechanic.

Q. And day or night? A. Day.

Q. How long have you been working for the company? A. One month.

Q. And were you also a member of this union in this case? A. Yes, sir.

Q. When did you become a member of the union? A. I don't know the exact date, but the last week in February.

Q. Some time after that were you fired from the employ of the company? A. Yes, sir.

Q. By whom were you fired? A. Mr. Wilsey.

Q. What were the circumstances of your discharge? A. Well, I went to work at eight o'clock in the morning, and at nine o'clock Mr. Wilsey came in and asked Mr. Bealle—where Mr. Bealle was, and I told him I didn't know, and he said, "You go to the office and get your money" and I asked him what was the reason, and he (455) said there was no reason at all, and he wouldn't give any reason.

Q. Did you go to Mr. England and get your money? A. Yes.

Q. Did you ask him? *Q.* I did not ask him a thing.

Mr. BLUM: I think that is all.

CROSS EXAMINATION.

By Mr. HUGHES:

Q. When did you join the union? A. The last week in February.

Q. Were you one of the organizers of it? A. I was not.

Q. Did you try to get any to join? A. No, sir, I did not.

Q. You are not an officer of it? A. No, sir.

Q. Have you got a job now? A. No, sir.

Q. Did you try to get a job? A. Yes, sir, and I have two or three prospects.

Q. Did anyone tell you not to get a job?

Mr. CARMODY: Let it stand. That is all right.

Mr. BLUM: I object to it.

Mr. HUGHES: That is all.

Mr. BLUM: That concludes the Government's case (456) from the witnesses that are here, and there are two others that are called, that I expect to have here, and I am reserving the right to call them, and I want to offer these two exhibits, and then close the Government's case.

One exhibit is the analysis of strikes and lockouts, in 1934, to table 6, page 9, showing an analysis of all the *stricks*, and in all industries.

Mr. HUGHES: That is certainly objected to.

Mr. LYNCH: I think we had better take them one at a time.

Mr. CARMODY: I won't rule on them until we have had the discussion.

Go ahead.

Mr. HUGHES: May we ask what the purpose of that is?

Mr. BLUM: The purpose of that is to show the number of strikes that occurred prior to the passage of the Act, and to show the justification for the passage of such a law, as is now in effect, under the Wagner-Connery Bill.

Mr. HUGHES: Are you prepared to show that the change is due to the Act?

Mr. BLUM: This is prior to the Act. It shows the effect of strikes on interstate commerce.

Mr. HUGHES: We object to that; and we don't see what that is. We are confronted with a particular case here. If he wants to show what effect this particular (457) strike will have or any strike in this particular plant will have on interstate commerce, then it seems to me that it might have some pertinency, but what does it matter whether the effect of the Act is good, bad or indifferent, in so far as other industries are concerned?

In other words, Your Honor has a finding of fact here, and you are not applying the law as yet, and that is to be done by the Board.

Now, I don't see how it is pertinent to find out, assuming this to be good authority, which I don't know anything about—

Mr. CARMODY: What is the authority?

Mr. BLUM: Department of Labor.

Mr. LYNCH: What is the authority?

Mr. BLUM: Department of Labor.

Mr. HUGHES: Are you prepared to show in what way these statistics are compiled?

Mr. BLUM: It is authorized under the Department of Labor, and it shows that they made careful investigation of it and they have the statistics.

Mr. CARMODY: I think that these are commonly admitted and notice is taken of it, and after all it is a Cabinet Department of the United States Government, widely known and widely quoted Bureau, the United States Bureau of Labor Statistics of the Department of (458) Labor, and Isadore Lubin, Commissioner, and it serves an important function, and it is probably of more use to courts than it is to Boards like this that are concerned with these problems, and probably closer to them than courts are, and it may be admitted for what it is worth.

Mr. HUGHES: Exception.

(The document referred to was received in evidence, and marked "Board's Exhibit No. 5").

Mr. BLUM: I want to offer a certified copy of similar statistics prepared by the United States Department of Labor, Bureau of Labor Statistics, on strikes and lock-outs in the motor transportation industry.

Mr. HUGHES: We object to it on the same grounds and for the same reason, and we can't see what possible bearing it has on these men who were fired, to submit a statement wherein the number of cases that strikes have occurred, in bus companies, is shown. It does not seem to me to have any relevancy.

Mr. LYNCH: Not only that, but as I read this, it appears first, the number of strikes and lockouts for the years 1934 was 67, involving 67,923 workers, with a total of 890,724 man-days of idleness, while in 1935, between January and July, the total was 47, involving a total number of workers of 32,732, with man-days of idleness of 170,171.

(459) If I recall, this Act was passed on July 5, 1935, and now this doesn't show any comparison of subsequent to this time.

Even if it did, may it please the Examiner, there is no connection shown that any decrease was the result of this Act. It may have been by virtue of voluntary acceptance of higher pay or the men realizing the situation of a breathing spell and not demanding higher wages all of the time, and coming down to a more sensible business relationship with their employer, or vice versa, or the employer giving in and paying more wages, and in other words, there has to be some connection between the one set of figures and the other set of figures, as showing that this Act is the cause of it.

Mr. CARMODY: It might even be that the very fact that there was discussion of the Act in Congress and widely known over all the whole of the United States may have led a good many people to believe that they might legally join an organization and have the protection of

the United States Government, and therefore they waited until after the Act was passed.

All sorts of thing could happen to bring about such an effect as that. It is hard to tell. It may be admitted for what it is worth. I don't know what it is worth.

Mr. LYNCH: Exception.

(460) (The document referred to was received in evidence, and marked "Board's Exhibit No. 6").

Mr. BLUM: With the reservation of the other two witnesses, that concludes our case.

Mr. CARMODY: Where are they?

Mr. BLUM: They went out to lunch.

Mr. LYNCH: May we suggest to the Board that there has been a great deal of mention here of the name of Giffin, and we don't know Mr. Giffin, and we haven't talked to him, and I think that the Board ought to call him and make him a Board witness, to determine what the relationship is.

Mr. CARMODY: Who brought Mr. Giffin's name in here?

You brought it in, and nobody else. I haven't heard it from any other source.

Mr. LYNCH: They were Government witnesses, and the testimony was received.

Mr. CARMODY: Did you ask anybody about Giffin?

Mr. BLUM: No.

Mr. LYNCH: May I suggest this; if they put on a witness, whether it is direct examination or cross examination, it is still their testimony, and if one of their witnesses says anything on his cross examination, they are bound by it the same as direct examination, because he vouches for every word of truth that that witness says.

Mr. BLUM: Mr. Giffin is in a court room, and if he

(461) feels that Mr. Giffin is essential to his defense, he has a right to call him, and he is within the jurisdiction of the Board.

The Witness ought to be called from either the Government side of the case or the defense, and the Government now rests, and if you want to put on your defense, call Mr. Giffin.

Mr. LYNCH: Here is a fellow that is necessarily one of the movers in this case, and we certainly don't know what he is going to testify to, and we can't vouch for him because we don't know him.

Mr. CARMODY: Do you say that he had no right to solicit membership in a union?

Mr. LYNCH: Not at all, sir, but I think that the Board might be interested to know what his connection was with this case, and there certainly is some doubt in the Board's mind now as to what was his relationship with this case, and what his motives were, and so forth. I think that the Board should have the picture of his activities before it from him.

Mr. HUGHES: It is up to the Board, and if you don't want to do it, we can't insist.

Mr. CARMODY: We would be glad to hear him if you will bring him here.

Mr. LYNCH: We don't want to use him as our wit-
(462) ness, because we don't know him.

Mr. CARMODY: We will recess until 1:30 o'clock.

(Whereupon a recess was taken until 1:30 o'clock of the same day.)

AFTER RECESS.

(The hearing reconvened at 1:30 o'clock p. m.)

Mr. CARMODY: Are we ready to proceed?

Mr. LYNCH: Will you see if this stipulation covers

what we have in mind, that the so-called "message" which has been received in evidence is one of a series which are in a book folder, all of which have been seen by the Examiner.

Instructions in the front of the book folder, which will be included in the record are part of the printed matter, and instructions contained in the service which is furnished by the Bishop-What Company, of St. Louis, Missouri, which instructions, however, were received—which service, however, was received by the company from a Chicago concern.

Mr. BLUM: And those messages are numbered consecutively?

Mr. LYNCH: The messages appearing in the book are numbered consecutively. The instructions also suggest that they be sent out in order as indicated in the chart of arrangement, included in the service.

(463) Mr. BLUM: Just at that particular point, I don't feel that ought to go in, because this is the chart of arrangements, but these instructions provide otherwise and they are going into the record anyhow.

Mr. LYNCH: And the instructions provide that they may be sent otherwise. That is the end of the stipulation. That is satisfactory to both sides?

Mr. BLUM: Yes.

Whereupon HAMMOND H. ENGLAND was called as a witness on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. England, were these letters or messages sent out in the numerical order as indicated in the book of the service? A. As indicated from the forms themselves?

Q. No, the chart of arrangements as suggested by the company. A. Yes, sir.

Q. And the particular message which has been produced here and received on or about March 1st, was not selected by the company by reason of the substance in (464) that message? It was merely a routine message which would happen to come out at that time? A. A routine message.

Q. And the chart of arrangement was determined to be followed when, if you know? When did you determine to follow this particular chart of arrangements, or how far back? A. We first got this service back in around the late fall.

Q. Of 1935? A. Yes.

By Mr. HUGHES:

Q. And you followed it ever since? A. We have, yes.

By Mr. LYNCH:

Q. Mr. England, when you left the stand the last time, by reason of the introduction of another witness there, we wanted to ask you about certain records which you had here, and we wish now to take up that point of the cross examination which we left off from Mr. England at that point, about those records, which he was asked about, which were not received on account of that fact.

Now, these records which you obtained from Mr. Mason, the Examiner has them there on his desk, will you examine those, please, sir, and will you also tell us (465) with regard to each driver that was separated from the service, the reasons why, if any, which were contained in that confidential report, and we will come to the other reasons later.

Mr. CARMODY: Are these in evidence and marked?

Mr. LYNCH: They haven't been marked yet.

Mr. CARMODY: Ought we not to mark them?

Mr. BLUM: For identification, but not in evidence.

Mr. LYNCH: Go ahead, Mr. England.

The WITNESS: They are mixed up a little bit, and I will have to check them.

Shall I read this report, and give you all of it?

Mr. LYNCH: Yes.

The WITNESS: Mr. Mason made this report and turned it in to me, personally, and he rode Bus 145, got on at 7:45 a. m.

Mr. BLUM: Does that apply to one of the discharged men?

The WITNESS: Yes. H. M. Hall.

He boarded a bus "near Lewinsville, and got off at 8:04 a. m. in Georgetown, and fare box checked O. K., and operator complained to passengers about using a small bus on this route. He told people to get together and go see Mr. Arnold so passengers would not have to stand in afternoon when carrying mail, he continued, they put the small buses on routes that could use large ones and vice versa, yesterday he had nine passengers standing due to mail carried in seats, supervisor told (466) him he wasn't turning in enough revenue, when Mr. Arnold said something to him, supervisor, he trembled in his shoes. Talking continuously enroute."

Mr. BLUM: What is the date of that?

The WITNESS: The date is Saturday, December 7, 1935.

Here is another report on the same date.

Mr. LYNCH: Did you check the bus that Hall was operating that day, and write his name on there after the report was given to you?

The WITNESS: I did, yes.

Mr. LYNCH: All right, sir. And that is true with regard to each one of these reports that you have here now?

The WITNESS: That is, yes, sir. We have another one on this same sheet of the same date against Mr. Hall, Bus 145.

Mr. BLUM: Let us not use the word "against." It is "about" Mr. Hall.

Mr. LYNCH: All right.

The WITNESS: "On 9:14 a. m., in Georgetown, off 9:35 a. m. near Lewinsville, operator still complaining and agitating passengers for a larger bus, said he told supervisor yesterday afternoon he was a dirty rat. Fare box checked O. K."

Mr. LYNCH: Are there any more in there relative to Mr. Hall?

The WITNESS: No, sir.

(467) Mr. LYNCH: Were there any other reasons why Mr. Hall was separated from the service other than those reports?

Mr. BLUM: He is testifying from these records, and if there is nothing in these records about Mr. Hall, this is not proper testimony.

Mr. CARMODY: Let us stick to this, and go through this, and go to other reasons.

Now let us go right through these.

Mr. LYNCH: Now, take the other drivers that you have in these reports, that you have separated from the service.

The WITNESS: We have Mr. West.

Mr. LYNCH: All right. What date?

The WITNESS: November 27, 1935.

Mr. LYNCH: All right. Let us have it.

The WITNESS: Bus 160, on at 3:03 p. m., New York Avenue and 12th Street northwest, off at 3:37 p. m. Railroad Crossing, Falls Church. White man on at 15th and K, deposited dime, and operator asked for additional ten cents when he left bus and failed to ask for additional ten cents at Falls Church.

Mr. LYNCH: Before you leave that, the driver West was correct in getting additional fare there, was he?

The WITNESS: He was not.

Mr. LYNCH: What should he have done?

The WITNESS: He should have collected his addi-
(468) tional fare when he went into his second zone, or before the passenger left the bus.

Mr. LYNCH: Go ahead.

The WITNESS: This is dated December 6th, 1935.

Mr. LYNCH: Who is it about?

The WITNESS: Mr. West. That is Bus 160, "on at 8:30 p. m., 619 12th Street, northwest, and off at 8:56 p. m., and white woman boarded bus at 819 12th Street and failed to deposit fare, and fare box covered, but he failed to ask for her fare when she left bus in Clarendon."

That is meaning that he *road* that passenger through Clarendon without paying any fare at all.

The next one is Mr. Crissman, dated November 30, 1935, Bus 151, "on at 1:05 p. m., 619 12th Street and off at 1:43 p. m., Quincy and 16th Street, Arlington. White man boarded bus 14th and K northwest, deposited dime and left bus at 16th Street, and operator failed to ask for additional fare.

Mr. LYNCH: That is 16th Street, Virginia?

The WITNESS: Yes, in Arlington, Virginia.

Mr. LYNCH: How much additional fare should have been collected?

The WITNESS: Five cents.

Mr. LYNCH: Was there anything else on those?

The WITNESS: That is all on those, of the men that (469) have been dismissed.

Mr. LYNCH: May I ask the Examiner to instruct the audience that this continual demonstration of feeling one way or the other should cease? Several times it has occurred to me, but I haven't made the request before, but I think it should

Mr. CARMODY: Let the record show that the Examiner *have* been very careful to watch that, and this is the second time only that he has noticed even an outburst of laughter. He immediately shut it off the first time, and he was on the point of doing it at this time.

This is no demonstration, but this is a business hearing, and I wish that we would continue to have the same quiet that we have had here for the past three days.

Go ahead.

The WITNESS: That is all that I have on those records.

Mr. LYNCH: Now, Mr. England, what other records do you have relative to the drivers that were discharged?

The WITNESS: We have a record of Mr. Magaha showing his accident record for the past year, and I have a duplicate of those accident reports here. That shows that a great number of them were due to his own carelessness.

Mr. BLUM: I move that be stricken out from the record. There is no evidence of the record in that and it is merely an opinion on the witness' part.

(470) Mr. CARMODY: We can get around to that. We will strike that out. We know what these are, and how they are built up and it is perfectly all right, now, they are original records, and now let us have the others.

Mr. LYNCH: How many accidents did he have altogether?

Mr. BLUM: I object to that. The record hasn't been qualified as to who made it or anything else.

Mr. LYNCH: Do you know how many accidents he had?

The WITNESS: We have reports of twelve in 1935, and I may refer to them.

Mr. BLUM: I move that be stricken out as not being responsive to the question.

Mr. LYNCH: It is responsive.

Mr. BLUM: The question was "Do you know?" and the answer is either yes or no.

Mr. HUGHES: There is no law compelling people to answer yes and no.

Mr. BLUM: He can qualify it.

Mr. CARMODY: He may answer that. I shall want to know how these records are compiled.

Mr. LYNCH: We expect to develop all of that. How many altogether, Mr. England, did you say,—that there were twelve in 1935 and one in 1936?

The WITNESS: Yes.

Mr. BLUM: That is improper at this point. He (471) hasn't developed it. Develop it before you get the answers, and I move that it all be stricken out.

Mr. LYNCH: Now we will develop that in just a second. Now, don't you have a report made by Mr. Magaha? A. I have a report which has been made under Mr. Magaha's instruction, typewritten by our office man.

By Mr. LYNCH:

Q. Do you have it right there? A. I have them, yes.

Q. Now all of these right here? A. Yes.

Q. I will ask Mr. England whether they are made out for the insurance company? A. Yes, the original goes to the inspector of the company, and they furnish us those.

By Mr. HUGHES:

Q. Do they require you to furnish those accident reports? A. Yes, they do.

Q. As a condition to writing the insurance? A. Yes, sir.

By Mr. LYNCH:

Q. In other words, you have the public insured. A. We do, sir.

(472) Q. Up to what amount? A. $50,000.00.

Q. For any accident involving any number of persons in the bus? A. Any accident involving any one person, or an accident as a whole.

Q. $25,000 or $50,000? A. I believe that it is $25,000.

Q. In other words, if there were fifty people on the bus and all of them were injured, the insurance could only cover up to the extent of $25,000.00? A. Yes.

Q. And the company would have to stand the balance of that? A. That is correct, yes, sir.

Q. That insurance requirement is one of the State Public Service Requirements, isn't it, of the State of Virginia? A. Yes, sir, it is compulsory.

Mr. BLUM: We won't object to these.

By Mr. LYNCH:

Q. Mr. England, the accidents that were had by Mr. Magaha and the versions of them that appear on these reports were the information that he gave you about them, weren't they? A. Yes, sir.

Q. And in considering the evidence of a driver, do (473) you take into consideration the fact of an accident, whether he was responsible or not? A. We do, yes, sir.

Q. What grounds would that be on? A. He may place himself in a position to get hit by everybody, and not be careful enough in his driving as to get hit by everybody that might come down the street.

Q. Are there any other accident reports as to any

persons who were separated from the service besides Mr. Magaha that you have reference to? A. We have one on Mr. Stanton; Mr. Stanton, I might say, was only in our employ a very short time, and this particular accident that he had was very careless.

Q. How many did he have over what period of time? A. He only had the one, in January, and his services did not start until the 8th of January, and he had an accident on the 17th of January.

Q. The same month in which he came to work? A. Yes, sir.

Q. Now, are there any accident reports relative to anyone else, Mr. England, of these six persons? A. I might correct myself; there are two on Mr. Stanton instead of one.

Q. All right, sir. A. There was one on the 17th and one on the 21st.

(474) We have Mr. Stanley Smith, and we have three accidents.

Q. In a year? A. Three accidents, two in the month of January, and one in the month of February.

Q. What year? A. Of 1936, and his services have only been with the company since a little before the first of the year.

Q. I see. Anyone else, Mr. England? A. That is all of the accidents.

Q. Were those reports of those accidents and the reports of Mr. Mason taken into consideration at the time of these men—in separating them from the service?

Mr. CARMODY: Were they told that? That that was the reason?

The WITNESS: No, sir.

Mr. LYNCH: Had you talked to them before about accidents?

The WITNESS: We had, on many occasions.

Mr. LYNCH: Were there any other records or information that you have relative to these six men, as to the cause for their separation from the service?

The WITNESS: Mr. Stanton was very inefficient, and the type of accident he has.

Mr. BLUM: That is not responsive to the question. (475) The question was asked as to whether you have any other records.

Mr. LYNCH: This is information that he has.

Mr. BLUM: What was the nature of the information.

Mr. LYNCH: He is going to tell about it.

The WITNESS: We had numerous phone calls as to the handling of the bus, and as I started to say, the accidents he had, which the report discloses there, slamming a door in a person's face, and knocking his glasses off, and we had numerous calls on just such things from him as that accident.

Mr. BLUM: Is that Mr. Stanton, you say?

The WITNESS: Mr. Stanton.

Mr. LYNCH: In regard to any of the other six men?

The WITNESS: Mr. Smith, I might explain, missed six times this year, and I might explain what a miss means: A miss means a man is signed up to take his run out in the morning at a certain time, and if he does not show up to take that run out, someone else has to take it out, and by him missing, there are reasons why he missed, and he might have been up late the night before.

Mr. BLUM: I object to that and move that it be stricken out. He is giving a suspicion and it is not responsive.

Mr. CARMODY: Strike it out. If he knows the man was drunk the night before, let him say so.

(476) Was he intoxicated?

The WITNESS: This particular one, I do not know.

Mr. CARMODY: All right.

By Mr. LYNCH:

Q. What occurs when a man misses? A. When a man misses, it inconveniences us a great deal, and we have to make arrangements to put someone else on his run.

Q. For instance, if a man misses—should miss being at work in an afternoon, say at 3:15 or 3:30, when he was supposed to be there, you may have to call on one of the other men to do an extra duty for a couple of hours, like Mr. Crissman was called upon? A. That is correct, yes, sir.

Q. Do those fellows usually like that extra work? A. They have asked for it on numerous occasions.

Q. And how many, over what year?

Mr. CARMODY: If that is true, what inconvenience is it if a man doesn't show up, if these men want extra work, and all of them want it?

The WITNESS: You mean the inconvenience?

Mr. CARMODY: Yes.

The WITNESS: If they make these misses in the morning, that extra work is not there, and—

By Mr. CARMODY:

(477) Q. When do they sign on for the trip? A. We sign them up the night before, each man on his particular run.

Q. Then how much in advance of that trip out are they expected to report? A. A half hour, 15 minutes to a half hour, and it depends on where they have to go from the garage to the start.

Q. So they sign up the night before for the morning run, and then they are to report 15 minutes before the starting time in the morning? A. That is right; and the same thing in the afternoon.

Mr. LYNCH: Was it possible for the company to separate a man from the company, to give him a reason, was that the policy of the company?

Mr. BLUM: I object.

Mr. LYNCH: They may have found that the relationship could better be maintained by just separating the party from the service without attempting to have a discussion on the merits or the demerits of the company.

Mr. BLUM: The policy of the company can only be a self-serving thing.

Mr. HUGHES: It seems to me that the Examiner asked a few minutes ago if it was whether the accidents —or whether he told him about the accidents, and if (478) we can show that it is the policy never to explain why a man is fired, it answers the Examiner's objection.

Mr. CARMODY: I think it is all right to do that, if we are going into the policy of the company.

Let us go into the policy of the company.

The WITNESS: We never give them a reason.

By Mr. LYNCH:

Q. Mr. England, was there any other information or knowledge that you had relative to these men that you haven't told us about? A. No, sir, I think that covers them.

Q. Mr. England, with regard to these certain persons separated from the service at various times, such as Mr. Atwell, did you tell him or any others that their work was kept up good, and they were discharged because they went to the meeting or discharged because they joined the meeting? A. No, sir. I did not.

Q. And that applies to all persons who were dismissed from service? A. Yes, sir. Let me explain that. When we—when they were sent to me, I paid them off, and when they asked questions, I did not answer them.

By Mr. HUGHES:

Q. You made no statement at all about that? A. (479) No, sir.

Q. Did Mr. Wilsey make any statement like that in your presence, or Mr. Kaylor? A. No, sir.

Q. Or anybody else employed by the company? A. No.

Mr. BLUM: Were they there when you were paying the fellows off?

THE WITNESS: No, sir. I was in my office.

By Mr. LYNCH:

Q. Mr. Kaylor is a clerk there, isn't he? A. Yes.

Q. Did you say to Mr. Kaylor, "You just started something and if it had gone on, it might have been too bad"? A. I did not.

Q. I will ask you if you received calls relative to the cleanliness of the buses?

Mr. BLUM: I object to that. There is no idea of who called them, or what, or anything like that.

Mr. LYNCH: We can't ask all of the questions at one time.

Mr. BLUM: Qualify your questions first, don't ask him the last one first.

The WITNESS: I did, yes, sir.

Mr. LYNCH: Would they be frequent or otherwise?

(480) The WITNESS: They were frequent, and we even had to pay for people's clothes, to have them cleaned, for getting them dirty on the buses because the buses did not go out in the morning properly cleaned.

Mr. LYNCH: I will ask you whether or not that would be on the occasions where would be ice and snow on the ground and that the cleaners would be required to put on skid chains instead of cleaning the buses?

The WITNESS: There was no ice and snow on the ground in the last week of February, because it was a very beautiful week.

Mr. CARMODY: How many of these clothes did you have to pay for, cleaning, in 1935?

The WITNESS: In 1935, how many clothes?

By Mr. CARMODY:

Q. How many times, how much? A. I would say about a dozen occasions.

Q. And you run how many buses? A. Forty-eight.

Q. What time do the buses start in the morning, the first bus out? A. The first bus is out at 5:30.

Q. And the last bus in at night? A. 1:20 in the morning.

(481) Q. How many did you pay for in 1936? A. In 1936?

Q. Yes. A. I just can't recall, but I think, seven. Of course we don't pay for them; that is turned in to the insurance company, and they have to pay for them. On several occasions we have gone ahead, and if a lady would call up and say that she got grease on her dress when she got on the bus in the morning, it was on the seat—

Q. Is that the reason why any one of these men was discharged? A. Yes, sir, that.

Q. Can you give me the man's name who was discharged because of that? A. Well, the men that cleaned those buses, when those buses were in at night time, and when they went out in the morning they should have been thoroughly cleaned, where you walk down the aisles, and those cleaners, to my best recollection, right now, there are more than the names of those.

Q. Will you give me the names of the men who were discharged because of complaints that came in that the buses were dirty, and you had to pay for cleaning the clothes? I am just pursuing this question. A. Those men that had charge of cleaning those buses.

(482) Q. And who were they? A. Two of them. One was Moore, and Garrison, and they were two cleaners at night.

Q. Do you know who you had to pay for the cleaning—or whose clothes you had to pay for, as a result of which these two men were discharged? A. Yes, the insurance company has a record when they pay anybody; they get quite a record.

Q. Do you know on whose complaint these men were discharged on the complaint of a customer or customers whose clothes were soiled? A. Yes. I don't know as I

could connect it, but both of them had charge of cleaning the buses inside.

Q. And they were both dismissed then as a result of a complaint or complaints? A. Yes, sir.

Q. And when did these complaints reach you? A. When?

Q. Yes. A. I can't tell you just the dates.

Q. Could you find that out? A. I think so, yes, sir.

Q. As related to these dismissals? A. The insurance company gets a release from everybody that they pay for, yes, sir.

Q. How would the insurance company get the name (483) of a person? A. We have to report it to them.

Q. Then you have a record of the name? A. That is correct, sir.

Q. Were there any day cleaners? A. Day cleaners on buses?

Q. Yes, sir. A. Yes, sir.

Q. Would you know whether the bus that soiled the dress was cleaned in the day or night? A. Yes.

Q. Would you know who cleaned it? A. Yes, sir.

Q. And you will identify that? A. I would know who was being paid to do that work.

Q. But I am asking you if you know who did it. A. I wouldn't say that I could swear who did it, but they were being paid to do that work.

Q. Were these men told when they were dismissed that they were dismissed because of complaints that had come in that the buses were greasy? A. I did not tell them, no, sir.

Q. Do you know whether anybody else did? A. I do not, no, sir.

Q. Were you, or did you participate in the discussion that led up to the discharge of these men before (484) their money was gotten ready? A. No, sir. They were sent in to me.

Q. Who told you to get their money ready for them? A. Mr. Wilsey told me that they were sending them in.

Q. Do you work for him or does he work for you? A. He has charge of the garage.

Q. Under who? A. He worked under me.

Q. Under you? A. Yes, sir.

Q. And he told you to get the money ready for these men? A. Right.

Q. But you didn't know that they were being dis-

missed? A. I knew that they were being dismissed, and I might tell you that we had been riding Mr. Wilsey for some time for not having these buses cleaned, because of the complaints that we would receive.

Q. During what period were you riding him? A. From late in the fall.

Q. About what time in the fall? A. From October on up.

Q. October on up? A. Yes, sir.

Q. Did you think that he was less efficient as a (485) manager from October on than he had been in the earlier years? A. I certainly thought that there was something wrong there.

Q. Would you think anything was wrong with him? A. From the past experience with him, I didn't think it could be.

Q. How about some of these men that had ben there seven years; did you think about their past experience? A. I had noticed them in the last six months, and have reported to him. I think it has been testified here that I was at the garage at six o'clock in the morning, and I have walked in that garage, and nobody was working, and I reported that to him on a number of occasions, and in fact we had quite a few words over it, just why he wasn't getting this work out.

Q. Did you ever talk to the men in there when you went in there about those conditions, directly? A. Yes, I have taken his foreman, and told him, and I said, "Why aren't we getting this done, and why aren't we getting that done, and what is the matter here?"

Q. Mr. Wilsey wasn't there? A. Yes.

Q. He was there in the day time? A. He was there in the day time, and sometimes at night. But during the day it was his duty to be there, and he was always (486) there at that time. I was there off and on at any time.

Q. Would you say that you kept up the number of—it takes a certain number of man hours to clean buses, doesn't it? A. Yes, sir.

Q. A certain number of man hours per bus, and every bus should get a certain amount of attention every day? A. That is correct.

Q. Man hour attention, if it is one man it is so many hours, and if it is three men, it is so many hours? A. Yes, sir.

Q. Would you say that the number of man hours allowed for the cleaning of buses kept up with the increase in your equipment all of the time? A. Yes, sir.

Q. In other words, as you added equipment, you added additional cleaners or man-hour cleaning to take care of it so that no man had any more to do per bus when you got 48 buses, than you had when you had 16? A. That is correct, sir. And I would like to clear this up, that where we put on 21 buses, over a period of about 18 months, that we retired six of those buses, in that time.

Q. Six old buses? A. So we are only putting on 15 additional buses, and at no time did we put on over six, and that was only on one occasion that we put on six, (487) and the others went from one to two or three.

Q. I don't know, because the record doesn't show the basic information. You know what I mean. A. It has been stated that we added on 21, but we have taken off six.

Q. Numbers aren't so material as the man hours required to maintain or to clean the fleet; isn't that it? A. That is right.

Q. The fleet of 16 buses, may take so many men, and those men may have only a fair average amount of work to do to keep them in condition, but if you were to add two more buses, you might have to add 10 men, or only six men, based on the man hours requirements to clean and maintain; isn't that right? A. That is correct.

Q. Now, what I am asking you is whether or not you were throwing an additional burden on these people of more cleaning than they were customarily required to do, or whether the personnel increased reasonably with the fleet? Of course, you don't need to add, if you double your fleet, you don't need to double your men, you know that, but you need to add a few men, and the new buses don't require so much attention in (488) maintenance as the old buses. A. That is correct.

Q. Well, we have got our fleet man hour discussion, and now you can go ahead.

By Mr. LYNCH:

Q. Just one question here. You weren't able, were you, over in that plant, or that organization, to keep

statistical records like they do in some of the larger corporations that you happen to know of or read about? A. I was not, no, sir.

Q. And a man may act as a clerk and a cashier, and do something else? A. Yes, sir.

Q. And sometimes even the general manager has to go out and get messages around and seeing that buses have chains on them, and things of that sort? A. I have done it all, yes, sir.

Q. These accidents that you have referred to, were those taken into consideration with what you have previously testified on your cross examination, were they all taken into consideration at the time of these men's separation from the service? A. That is correct, yes, sir.

Q. Mr. England, do you have information or records relative to the number of service calls or road calls which were made from December up until the 4th or 5th (489) or 6th of March? A. Yes, sir, I have.

Q. When were those records commenced to be maintained? A. On the 15th of December.

Q. And were fairly accurate records kept from that time on? A. Yes, sir.

Q. Have you checked over those records—I think that you have checked over one the other day with the Examiner to see the number of calls you received on a certain given day? A. Yes, sir.

Q. Have you gone through and made a list of the various service calls that you have received as a result of the break-downs from the road? A. I have, sir.

Q. Will you read that compilation into the record, please?

Mr. BLUM: Just a minute. I want to state—

Mr. CARMODY: Did he state why they wanted to make these, or started to make these?

Mr. LYNCH: Why did you start to make them?

The WITNESS: We had made service calls, and it wasn't necessary; but we commenced to have so many service calls that we decided, or I decided, that I would like to know the nature of them and know why, and

(490) that is why we put in this record system, that we weren't required to put in by law.

Mr. BLUM: Are those the same records that were attempted to be put into evidence the other day?

Mr. CARMODY: They were.

Mr. BLUM: Objected to.

Mr. CARMODY: Sustained. Some are copies and some are originals, and they don't show anything, and I examined them carefully.

Mr. HUGHES: We submit, Your Honor, that if they were acted upon by the management, and it doesn't mean whether they mean anything to this hearing or not, that is sufficient.

In other words, if records were kept over a period of time which led up to a conclusion on their part, that something was going wrong, and they acted upon that, it seems to me that we can put those records in to show the foundation of their action.

It may not be that they are good records, and you can make sense out of them.

Mr. BLUM: We will make no objection if they will bring in everything up to date, up to yesterday.

Mr. LYNCH: We have no concern as a result of any other men. After all, it may be an entirely different situation, with a man coming on new on a job, and a man being on the job for two or three years.

(491) Take, for instance, Mr. Magaha; he said that after two years or whatever time it was he was on there, he didn't consider himself a good bus driver, if I recall his testimony accurately.

Mr. BLUM: If counsel will stipulate that road calls and service calls have increased materially since March 5th, we will admit those in evidence without asking for these others.

Mr. LYNCH: I don't know whether they have or

not. I submit it doesn't make any difference, but it shows whether there was any tendency or justification of these.

Mr. CARMODY: If they are not clear and don't show any more evidence of where they come from, and what was done with them than these do, I wouldn't be interested to see them up to yesterday.

Mr. LYNCH: May I attempt to develop for the record, may it please the Board, as to whether any additional enlightenment may be obtained, in addition to what appears on those sheets?

Mr. HUGHES: Can we ask the witness if he can explain the records, and if he knows where they came from, and who kept them?

Mr. CARMODY: If he can take each one of these records and tell just exactly where it came from, and what happened, and who was dismissed or who was promoted as a result of it, yes.

(492) Mr. LYNCH: I presume, Mr. Examiner, that that would be a physical impossibility.

Mr. CARMODY: I am only doing what you have asked.

Mr. LYNCH: I don't think anybody's memory would be this good, and I wouldn't attempt to have the witness do that.

Mr. BLUM: You are asking him to take them from the records.

Mr. LYNCH: A man can't tell the circumstances of all of those.

Mr. CARMODY: The witness is here who acted on them.

Mr. LYNCH: I think it is placing too much of a burden upon the human mind to attempt to remember all of those.

Mr. CARMODY: I don't think it places near as much

of a burden on the witness as it would on the court to examine these and pass judgment on them in their present state, if the court could see them just as they are.

Mr. LYNCH: May I develop it in this way: If it throws some light on it, and if it does not, the Examiner can stop me?

Mr. CARMODY: There is nothing here to show that there is any connection between these and the company, or any of the men.

Mr. LYNCH: Mr. England—I assume that they are (493) refused in the way they are offered, and an exception is taken.

Mr. CARMODY: There is a place on here for signatures and they are not signed and it doesn't say who received them.

Mr. LYNCH: Did you receive them, Mr. England?

Mr. CARMODY: There is a signature on here showing that an office dispatcher received them.

The WITNESS: They were made up there at the office, and in turn they went to the shop, and the man was given that call, and sent out on the road.

By Mr. LYNCH:

Q. How did they come? A. I brought them from the office.

Q. And did they come back to the office after the call had been taken care of? A. Yes.

Mr. CARMODY: Do you still use that form?

The WITNESS: Yes, sir. It means a lot to us.

By the EXAMINER:

Q. How many years did you operate buses before you made up this form? A. How many years?

Q. Yes. A. Fourteen.

(494) Q. Before you started using forms? A. Yes, sir.

Mr. CARMODY: There is nothing on here to show what the road condition is or weather conditions were. They are not admissible.

Let us go on.

Mr. HUGHES: Exception.

Mr. CARMODY: Granted.

What are we going to do with these accident reports?

Mr. LYNCH: He testified to them.

Mr. HUGHES: We submitted them for exhibits for identification and refreshing his recollection, and he thereby testified that he remembered various reasons why the men were discharged.

Mr. CARMODY: What are the reviewers of the record going to do without them, and how is he going to know what the spacing is between the complaints and how serious the accident is, or what? We had better have them in evidence.

Are there additional copies?

Mr. LYNCH: May I ask the witness this one question?

Mr. CARMODY: Let us get them in evidence.

(Marked Exhibit 7 in evidence.)

Mr. BLUM: I don't object to them.

By Mr. LYNCH:

Q. Mr. England, did the number of road calls from the first of the year of 1936, to March 4th, increase? A. Yes, sir.

(495) Mr. BLUM: I object to that, increase or what.

Mr. LYNCH: Over preceding reports for previous months and previous years?

The WITNESS: Yes.

Mr. BLUM: You testified that you didn't have any records of that.

The WITNESS: From my own knowledge.

By Mr. CARMODY:

Q. How many did you have in December, 1934? A. I couldn't tell you, but not near as many as we had then.

Q. How many did you have in the summer—in December, 1935? A. December, 1935?

Q. Yes. A. The records are here.

Q. I am asking you. A. I don't remember offhand. Entirely too many for the operation.

Mr. LYNCH: We have no further questions.

CROSS EXAMINATION.

By Mr. BLUM:

Q. Now, Mr. England, how often did you distribute these pamphlets to your employees? I mean these personal messages in evidence? A. They were distributed (496) every Monday morning.

Q. Was that done every Monday since you had this thing? A. Yes, sir.

Q. Have you missed any Mondays at all? A. Not to my knowledge, sir.

Q. When did you first start distributing these? A. Some time in the fall.

Q. Do you recall the month? A. No, sir.

Q. Was it in September? A. No, I think not.

Q. October? A. I wouldn't say. If you can count the weeks back and check it on there, it will tell you exactly and if I may be permitted to do that, I can tell you the exact week.

Q. Well— A. Now, the bills will show when we received them, and our correspondence will show, and the salesman that sold us that service was corresponding with us and calling upon us.

Q. Can't you recall the month that you started to distribute them? Was it before Christmas? A. Yes.

(497) Q. Was it before Thanksgiving? A. Well—

Q. You actually distributed the Thanksgiving message out of this thing? A. We did, and it recalls to me that it was probably a couple of weeks before Thanksgiving.

Q. I see. A. It seems to me we distributed a couple when Thanksgiving came along.

Q. Would it be some time in October? A. I might tell you—in October.

Q. Did you start distributing in October? A. We started distributing them in October—in October, I would say, the latter part.

Q. Was it the last week in October?

Mr. LYNCH: Just a minute. I am not going to say anything. I submit if he wants the exact week, the witness says he can find it by counting back the weeks, and let him get the record that he has there, and he can tell exactly.

Mr. CARMODY: You are not sure that he distributed them every week.

Mr. LYNCH: He says that he did.

Mr. CARMODY: His recollection is that he doesn't remember when he started distributing them, either. He (498) can find out from the bills, perhaps, when the salesman sold them to him.

The WITNESS: I might say this: Any of these men in here, if they have followed the instructions, and have the pamphlet, the messages were given to them every Monday, and any of them can testify that they got them every week.

By Mr. BLUM:

Q. Do you know whether the last week in October you started distributing these things, or were they out in the last week in October? A. I wouldn't say exactly, no, sir.

Q. Do you know whether you distributed the first week in November?

Mr. LYNCH: I make the same objection.

Mr. HUGHES: I would be disposed to concede it either way, whatever he wants.

Mr. CARMODY: If he doesn't know, he doesn't know.

Mr. LYNCH: We can call up there and find out.

Mr. BLUM: I think it is important.

The WITNESS: I can tell you by looking at this.

Mr. BLUM: I don't want you to tell me by looking at that.

Mr. LYNCH: He says he won't permit him to look at it. I ask the Examiner to permit him to refresh his (499) recollection by looking at it.

Mr. CARMODY: What is there in that, that would tell him the week that he started to distribute?

Mr. LYNCH: It may help him.

The WITNESS: The number of messages that we have delivered, starting with this Monday, of this week, and counting back the ones that were checked off, will show you the first week we started that service.

Mr. CARMODY: Why don't you want him to look at them?

Mr. BLUM: For the reason that the evidence will show that if he had started this even the first week in October, that this message which is marked "March 14" would have been distributed following this procedure, the first week in February.

Mr. LYNCH: That is his calculation, and it may not be the witness' calculation.

Mr. CARMODY: I think the witness is entitled to make a calculation there. It might be important to call up and ask when it did start.

Mr. BLUM: Look at that message 57, which is now

in evidence, and notice that at the top in pencil is written, "March 1, 1936". A. On the line?

By Mr. BLUM:

Q. Yes. A. We talked that thing over, that being a coincidence, and I said, we had better date that, be-
(500) cause somebody will certainly say that we went through this book and picked it out, but we can certainly prove that we put these messages out as the front of that book shows.

Q. I see.

Now, there are no other messages marked with particular dates, are there? A. Not to my knowledge.

Q. I see. Now, when you picked that message out in its consecutive order, did you notice that coincidence, that it might be construed wrongly against you, is that true, on March 1st? A. That was a coincidence, yes, and we talked of that.

Q. On March 1st, you hadn't fired anybody yet, had you? Why did you take that precaution? Did you expect any trouble? A. This?

Q. Yes. A. No.

Q. Why did you mark it on March 1st, if you expected no trouble and felt that the coincidence wasn't important? A. It was important because—

By Mr. HUGHES:

Q. Hadn't you just found out about the labor organization being organized on the 27th, and didn't you know
(501) that there were efforts made to organize the union? A. I did, yes.

Q. And this about around in huddles.

By Mr. BLUM:

Q. You didn't care whether they organized a union or not, did you? A. At what time?

Q. In March 1. A. I didn't know enough about it.

Q. You knew on February 28th, a union had been organized, didn't you? A. No, sir.

Q. Didn't you just answer Mr. Hughes that you knew on February 28th? A. I understand; I heard about it.

Q. I see, and you didn't know enough about it on March 1 to give you *an* concern, is that true? A. No.

Q. Why did you mark "March 1" on that message?

Mr. HUGHES: When did you mark it, in the first place?

The WITNESS: I might state that that wasn't marked at that particular date, but we did mark that at least two weeks after that.

By Mr. BLUM:

Q. Why did you state when I first asked you that, (502) that you remarked the coincidence when you issued it and thought you ought to put the date on it? A. If I said I marked it, I did not. That was at that particular time.

Q. But when you did mark it you did mark the coincidence of the message with the labor organization? A. We spoke about it.

Q. Why did it give you any concern at that time? A. We thought it was a funny coincidence for it to come out at the particular time that we had heard of this union being formed.

Q. I see. You didn't expect any trouble as a result of it?

Mr. LYNCH: That has been asked.

Mr. BLUM: It hasn't been answered before.

Mr. HUGHES: Did you anticipate that somebody was going to accuse you of something in connection with it?

The WITNESS: I did not.

Mr. HUGHES: Then what was the necessity of marking it?

Mr. LYNCH: Mr. Examiner, I submit that they come here in one breath and say that they are complaining because they don't keep accurate records, and another time because they happen to put a date on some paper that was issued criticizing it because they are attempting to do something which they should do with every record.

(503) I think personally that these records should be more accurate and more in detail, and the dates should

have been put on each one when it was issued, but if they weren't, there should be no criticism of that.

Mr. BLUM: I have certainly tried to be courteous through the course of this procedure, and I attempted not to interrupt the counsel on direct or cross examination and I insist on the same right, not to be interrupted during cross examination.

Mr. CARMODY: Finish your cross examination, and there will be some re-cross and re-direct.

By Mr. BLUM:

Q. You say on March 1, when that message was issued, you remarked about the coincidence with somebody in the office, about that message and the organization of the labor union; isn't that true? A. I made a remark about the coincidence of it coming out at this particular time.

Q. I see. Did it give you any concern at that time? A. No, sir.

Q. And when did it start to give you some concern?

Mr. CARMODY: That is a fair question.

By Mr. BLUM:

Q. You marked it. When did it give you such con-
(504) cern that you marked it "March 1st"? A. At least two weeks later, around the 15th.

Q. The 15th of when? A. March. That is the approximate date.

Q. How did you happen to recall that that message was issued on the 5th of March—on the 15th of March? A. How?

Q. Yes. A. Have you read the next two messages we gave out?

I just wanted to tell you why: The next two messages we gave out was the follow-up of that particular one, and then we knew about this complaint.

Q. What were the next two; I didn't see that. A. They follow in order, sir.

Q. Let me see them. The next one should be 61. A. That is correct.

Q. Now, message 57 is marked, "The customer says

—co-operate or capitulate" and it discusses the question of "cliques" isn't that true? A. Yes.

Q. And the follow-up message, according to your statement of what followed, the next would be message No. 61. A. Yes.

Q. And message No. 61, is "The why of the pleased customer", and throughout the entire message the word "clique" does not appear; is that true? A. Read it all. (505) Q. "A customer who patronized a certain organization for many years was asked why he clung to them so loyally.

"The answer was, 'It makes no difference of whom I ask information there, I get it quickly and accurately, and no matter what I expect in the way of service, it is always satisfactory. They all know their business and they know how to please the customer'.

"If that same person were our customer, could he say the same of us?

"Is each individual here so well informed that he could answer the customer's questions quickly and accurately, and is he so in the business he would make the service satisfactory?

"Could the customer truly say of our organization, 'I cling to them because they all know their business, and they know how to serve the customer'?"

How is that a follow-up of a message that talks about "cliques"? A. The whole message doesn't talk about "cliques".

Q. It doesn't. Message No. 57, dated March 1, 1936:

"The customer says—co-operate or capitulate.

"Sometimes groups of individuals in a business organize themselves into cliques.

"Webster's definition of a clique is, 'a narrow cir- (506) cle of persons associated by common interests; a small and exclusive set, or coterie; generally used in a bad sense'.

"The reason that the word clique is 'generally used in a bad sense' is that the small and exclusive set composing it usually thinks more of promoting the selfish interests of the clique than the collective interests of the organization.

"The members are more concerned in serving their own ends than in serving the customers of the business

who provide them with employment and pay their wages.

"One sure way to acquire a poor standing, both in position and pay, in a business organization is to acquire a good standing in a clique."

Does that whole message concern "cliques"? A. Yes, it speaks for itself.

Q. Now, where would you say that message No. 16 is a follow-up of that? A. Well, when he read that and the following one—you are not through there—that was only one week, and the second week there was just something called to my attention in there that made me date that.

Q. All right, now. The next message, following the order here, is No. 63.

"The bee loses its life when it uses its stinger.

"Some people are constitutionally revengeful.

(507) "Any little slight, or rebuff or criticism will awaken the sleeping wildcat in them and they will do anything or go to any length to 'get even with' the person who, they feel, is responsible for their being 'wronged'.

"We do not believe we have any such people in this organization but if we do have, we caution them that a revengeful spirit is a poor recommendation for advancement.

"The sting of the bee is the death of the bee, and the sting of a revengeful person that causes friction in an organization or that results, as it sometimes does, in the loss of a valued customer may be fatal to that person's further opportunity in the business."

You say that is also a follow-up of the one about "cliques"? A. That is the one that I dated. You wanted the truth and that is the truth, sir.

Q. That message, two weeks later after March 1, would be March 15th; is that true? A. Yes.

I said, "approximately". They come out on Monday.

Q. The one came out on March 1, didn't it? A. Yes. They come out on every Monday, and they are signed out on March 1, and come out on Monday, and that message came out on the 16th, two weeks later.

Q. Whatever date Monday was on. A. I calculate that is correct.

(508) Q. What was peculiar about that message with relation to the labor situation going on in your place that caused you to mark the date on that?

Mr. LYNCH: May I submit to the Examiner that we have gone far enough in this, and the messages are in evidence, and if the word "clique" and the "small minority" as indicated in the message No. 57, or the witness' interpretation or misinterpretation of a follow-up is correct, or incorrect, I submit it is all before the Examiner, and that the record should not be further encumbered with the examination on this point.

Mr. CARMODY: I don't think the record is quite clear yet as to why this one message was marked in here. I think the witness has been trying to tell, but I think he has been interrupted by all of the counsel too often. I think if we just give him a chance to tell that story, he would tell it, exactly why he marked that.

He told us first, and he left the Examiner under the impression that he marked it on March 1, and then he testified that he marked it about the 15th of March. Now, he has tried to tell why he marked it, and why he thinks that there is some relation between that message and the "clique" message, and inasmuch as he did it all, and that part of the managerial function is to get these (509) things out, and to build morale, I think that he ought to be entitled to tell.

Mr. HUGHES: We have no objection.

Go ahead and tell it, Mr. England.

The WITNESS: When this second message came out, and when I read it over, and whether I interpreted it correctly or not, the coincidence had already happened—

Mr. CARMODY: What do you mean by "coincidence"?

The WITNESS: Issuing this one on March 1; and it occurred to me that we should mark it, at that time.

Mr. CARMODY: I don't know what you mean by "coincidence".

The WITNESS: Coincidence of the trouble that we had just heard about, in reference to the union, and the type of the message that had come out, at that time.

Mr. CARMODY: Between the time that you issued that "clique" message, on the 2d of March, and the time that you put the date "March 1" on it, the second message issued after the clique message, how many employees had you discharged, in your company?

The WITNESS: I would say twenty or twenty-one, whatever the number was.

Mr. CARMODY: Were they in "cliques"?

The WITNESS: What do you mean?

By Mr. CARMODY:

Q. Were any of them members of a clique? A. I wouldn't say that they were, no, sir.

(510) Q. All right. What is the coincidence, then, between their discharge and this "clique" message? A. I didn't say there was any coincidence between them and the message.

Q. What was the coincidence between what two things was there a coincidence? A. The thing that we had just heard of, a union coming up, and this message particularly coming out on that date.

Q. What connection is there between a union and a "clique"? A. We saw our men all standing around in groups and couldn't get them to do any work, and I would say that was a clique, regardless of what they were hatching up or what they might be talking about.

Q. Would that apply to the drivers standing around and not doing any work? A. The drivers were standing around at the garage, and they are not on duty, and they don't go on duty until they get on the bus.

Q. Well, that clears up in my mind what this business is, here.

Mr. BLUM: Now I will abandon that part of it.

By Mr. BLUM:

Q. Now, these reports, you say that after these reports came into your possession, these names on here

(511) were put on in your handwriting, by you? A. That is correct, yes, sir.

Q. Who put the word "O. K." after the name? A. Who did?

Q. Yes. A. I did.

Q. When? A. At the time.

Q. Now, for what purpose did you put "O. K," after those names? A. That was in reference to after reading it over, and knowing personally myself from the type of man, and other men had complaints, and other complaints that I did not have on a man, in my judgment, if I felt it should be O. K.'d, I O. K.'d it.

Q. I see. Now, this driver I show you first, with the driver on it, with the word "O. K." on it was not fired? A. Yes, sir.

Q. He was not fired? A. No, sir.

Mr. HUGHES: Can we have the name?

Mr. BLUM: Perry.

By Mr. BLUM:

Q. Now the next man appearing on here, Salter, has (512) the word "O. K." after his name? A. Right.

Q. He wasn't fired? A. No, sir.

Q. When was that O. K. put on there? A. The same time that that report came in.

Q. Back in October? A. That was put on every day as those reports came to me, so that I took it off of what we call our "put out" sheet, to get it on immediately.

Q. This report is dated Saturday, November 30th; were these O. K.'s put on in that day? A. That was turned in to me the next morning, on a Sunday, and of course that man worked, and each day's reports was turned in to me the following morning.

Q. Now we come to the next day, a man by the name of Reynolds, and you have the word "O. K." on him, also. Is that man still in your employ? A. Yes, sir.

Q. He wasn't fired with these men? A. No, sir.

Q. Now, the next man we come to—

Mr. LYNCH: What does he mean by "O. K."?

Mr. BLUM: I asked him that.

The WITNESS: I explained that knowing the complaints, and the other information that had come to me, (513) and the type of report, now, in my judgment, that man was all right, and I didn't have to be worrying about him for any reason.

By Mr. BLUM:

Q. Now we come to Crissman, and he is one of your discharged drivers, is that true? A. That is true.

Q. And the word "O. K." doesn't appear after his report, does it? A. No, sir.

Q. You have a blue circle. A. What does that mean, that blue circle?

Q. Yes. A. I put that there yesterday to identify it so I wouldn't have to take up so much time to go through all of those names.

Q. That was put on yesterday? A. Yes.

Q. Here in the hearing room, or back at your office? A. In my office.

Q. And when these records were here the other day that blue circle didn't appear on there? A. It did.

Q. When did you put that on? A. Before they was ever brought in the hearing.

Q. Then you put it on before Monday, is that true? (514) A. Yes, sir.

Q. Now we come to the next one, of the same date. What is this driver's name? A. Dinkle.

Q. You have "O. K." after him. A. Yes.

Q. And is Mr. Dinkle still in your employ? A. No, sir.

Q. Was he discharged? A. No, sir.

Q. Where is he? A. I don't know.

Q. He is not one of the men involved in this? A. Not that one, no, sir.

Q. Now, Mr. Tingstrum, there is no wording after his name at all. Is he still in your employ? A. He is, yes, sir.

Q. Now, on November 30th, you received one, two, three, four—five reports—or six reports by six drivers, and only one of these six was discharged, is that true? A. Those records show for themselves.

Q. Now we come to the same date, November 30th, the driver Reed, is that true? A. That is right.

Q. There is no notation after his name? A. No, (515) sir.

Q. And is he still working for the company? A. 100 per cent.

Q. This particular—if you look at this and compare it with the others, isn't that the worst record of the day, made by that detective that was on here yesterday? A. Yes, but that was—let me explain that. That is—I did not O. K. that—W. E. Reed. I didn't O. K. that, because there was a doubt in my mind as to just what had happened, so I went back and checked with our checker, to get it more explicit, and he has satisfied my mind as to what had happened, whatever it was at the time. It was O. K. We had other checks from which to get it.

Q. You had other checks besides the man that made the investigation yesterday? A. I think you can find other checks of Mr. Reed in there.

Q. He is still in your employ? A. Yes, sir.

Q. And did you ever have any doubt about Mr. Crissman so that you wanted to check up with him, with somebody else, about him? A. We sent the man out and checked them all.

Q. That is the same man that reported yesterday? A. Yes.

(516) Q. And that same man reported about Reed, didn't he? A. Yes.

Q. And Reed's record was the worst record turned in? A. I wouldn't say so.

Q. Which one was the worst?

Mr. Lynch: Was Reed a member of the union, do you know?

The Witness: I don't know.

By Mr. Blum:

Q. On this report? A. Why do you say that is the worst record?

Q. There are five passengers supposed not to have been included in his report, isn't that true? And the worst thing you have about any other man is that he failed to collect 10 cents from another passenger; isn't that true? A. No, sir.

Q. Isn't that the worst report you had? A. You had better read those reports.

Q. Was that one of those fired? A. Yes, sir.

Q. Which one? A. He doesn't have to be fired at this time.

Q. Not one of the men included in this particular case here, is it? A. No, sir. It goes to show what we (517) started to do on the results of that.

Q. When was that other man fired? A. Around the 15th of December.

Q. The 15th of December? A. Yes.

Q. As a result of check-ups made at the same time this was? A. Yes.

Q. Why weren't these other men fired at the same time? A. We had set out there to have that program to carry right straight through, and he was so terrible that we couldn't afford to keep him on the bus another day.

Q. And that is a man not involved in this particular case? A. We took the worst one and set up a program to carry them right straight through it, sir.

Q. Where did you set up this program? A. Well—

Q. How did you go about setting up this program that you are going to carry right straight through? A. How?

Q. Yes. A. We took those men that we knew wasn't efficient, from those reports, and the reports show for (518) themselves.

Q. Did you write out a regular schedule when you were going to fire these particular individuals? A. If the weather hadn't gotten as bad as it did, they would have all been gone a long time ago.

Q. Now, although you had set up a regular program of a gradual decrease in your force— A. I might say that there are other things besides those reports.

Q. What are those other things? A. Reports of complaints, for instance, Mr. Crissman, I have a complaint on him, and the gentleman would be glad to come here and testify, on several occasions.

Q. When was that complaint received? A. When were they received?

Q. Yes. A. He has complained in the past six months.

Q. In the past six months? A. Yes, sir.

Q. When was the last time? A. Oh, probably a month ago, or better.

Q. And did you fire Mr. Crissman at that time, when you received those complaints? A. No, sir.

Q. You did not? A. No, sir.

(519) Q. Did you fire him on March 6th? A. That is correct.

Q. Now, I refer to December 8th, Mr. West, Bus 160, on 2 p. m., 619 12th Street northwest, and off 2:24 p. m., Clarendon Circle, Fare box checked o. k., operator in terminal box uncovered, operator relieved garage 2:19 p. m. And was he fired as a result of that record? A. That record doesn't say anything against him.

Q. Of course it doesn't. Now, you stated before that your reasons for firing certain of these employees were based on the record here and other information that you had. A. Other complaints that I had.

Q. Now, was Mr. West discharged due to these records at all, in any part? A. Yes.

Q. Show me where it was? A. I read you one.

Q. Let us see if I can find it. A. I believe I read you two.

Q. Mr. Landis O. K.; is he still in your employ? A. Yes.

Q. Was he fired? A. No, sir.

Q. What is this man's name? A. Armentrout.

(520) Q. Is he still working for the company? A. Yes, sir.

Q. Mr. Havener, marked O. K.? A. Yes, sir.

Q. Mr. Clayborne, no mark. Is he working for the company? A. Yes, sir

Q. I will read Mr. Clayborne's record:

"White man on K and 14th deposit dime, operator failed to ask for additional nickel."

That is the same thing charged against these other men that were discharged, isn't that true? A. I would like to explain the circumstances there; Mr. Clayborne was a very new man and he had just gone to work, and these other men, as you know, have been there a long time, and a new man certainly was very likely to miss those fares, and an old man is certainly familiar, and should get them.

Q. Now, if the bus gets very crowded, isn't it possible for even an old man to miss a fare? A. It is possible, on certain occasions, but when the bus is not crowded, how about that?

Q. Well, we won't go into any argument about that. A. We would like to show how many were hauled on cer-

(521) tain trips.

Q. Now, where you have a very crowded bus, and an old driver, and that driver just misses a nickel or a dime, that is pretty good, isn't it? A. Yes, if he misses those all day long, it is not good; it is pretty bad.

Q. I am talking about when he has a crowded bus, and he only misses about a nickel or a dime on that particular trip, that is pretty good, isn't it? A. You don't want to give away anything, do you?

Q. You thought that you could pass off Mr. Clayborne's missing of this nickel, but the older man ought to be brought to book for that; is that true? A. A new man certainly ought to have an opportunity, and old men have had an opportunity.

Q. Mr. Hancock, marked "O. K." Is he still an employee of the company? A. Yes, sir.

Q. Now, Mr. Magaha was discharged, wasn't he? A. Right.

Q. He is one of the old men? A. Not very old.

Q. Would you consider him in the same class as Mr. Clayborne? A. No, sir.

(522) Q. You wouldn't? A. No.

Q. And the charge on here against him is that he failed to ask for an additional nickel from a passenger, is that true? A. That is true.

Q. Is that the way the record said? A. I didn't read it into the record, I overlooked this one. Do you want me to read it into the record?

Q. Yes, go ahead. A. "On Sunday, December 8, 1935, the Bus 161, on at 7:32 p. m. New York Avenue and 12th Street. Off at 8:09 p. m., East Falls Church. White woman on K and 16th deposited dime, and rode 15 cent zone, Washington Ave. Operator failed to ask for additional nickel."

Q. That was the charge against him in this particular instance? A. Yes.

Q. Now, Mr. Harris, is he still in the employ of the company? A. Yes, sir.

Q. Marked "O. K." A. Yes, sir.

Q. Mr. Devers; is he still in the employ of the company? A. Yes, sir.

(523) Q. Is he an old employee? A. Devers?

Q. Yes. A. Not real old, no.

Q. How long has he been in the employ of the company? A. Three years.

Q. Longer than Mr. Magaha? A. Yes.

Q. Is that true? A. Yes.

Q. And you feel that the old men ought to be held accountable when they miss those fares? A. That is taken into consideration, with other things.

Q. Now, the complaint here about Mr. Devers, who has been in your employ three years, is a failure to take an additional dime? A. Yes.

Q. Is he still in your employ? A. That is correct.

Q. Now, Mr. Hartman, is he still in the employ of the company? A. Yes.

Q. And he is marked "O. K."? A. Yes. I haven't seen it.

Q. Is that marked "O. K."? A. That is correct.

(524) Q. Now, in all of these reports that you have glanced over before, you were able to pick out, out of all of them there, only five which concerned three of the men that were discharged, isn't that true?

Mr. LYNCH: The mathematical calculations in the record, whichever ones they are, that is just a mathematical calculation.

Mr. BLUM: And none of these reports affecting any of the men discharged went as against their honesty, did it?

Mr. LYNCH: That is a question there. Whatever was read there.

Just a minute. I submit that the witness' interpretation of whether it is honesty or not, he can't place that. For instance, if a person gets on a bus, it may be carelessness or maybe absolute dishonesty. This witness can't say that and he shouldn't be required to say it. Let the record speak for itself.

Mr. CARMODY: He can say whether or not in his judgment, as an executive of the company, analyzing these records, and paying for them, to a man whom he had do it secretly, all right, he can answer. That was his own judgment. I don't know what his judgment was.

In your own opinion, did you consider those men dishonest as a result of this report?

(525) Mr. HUGHES: At that time, of course, not now.

The WITNESS: Yes, sir.

Mr. CARMODY: All of them short you consider dishonest?

The WITNESS: Yes, sir, other things would come into the picture.

Mr. CARMODY: You consider all of those men dishonest?

Mr. LYNCH: May I suggest if it would be dishonesty or carelessness, if he knows?

The WITNESS: I would say carelessness.

Mr. LYNCH: You don't know whether they wilfully let these men go by with their fare?

The WITNESS: I don't know that.

Mr. BLUM: The last report that you have over here is December 8th, is that true?

The WITNESS: If that is the date on there. I think that is the date the report was finished up.

Mr. CARMODY: Let the witness go over the reports.

The WITNESS: The last one I see is December 8th.

By Mr. BLUM:

Q. And not one of these men who had been discharged and whose name is mentioned in that report was fired until some time in March, 1936, is that true? A. In this particular one, yes, sir.

Q. May I have these accident reports, please? You have put in the record twelve accident reports, appa- (526) rently made out by Mr. Magaha himself, stating that he had been involved in an accident. A. Yes, sir, under his instructions.

Q. We will take one dated February 17, 1936. Who is to blame for the collision, Mr. C. O. Magaha? He said he was responsible for that, himself. Was that true? A. If that was the report, if that is what the report says.

Q. Do you know whether or not your insurance company had to pay for this accident? A. I couldn't tell you offhand.

Q. Well, take the next one—dated December 12, 1935; who is to blame for the collision, Harold Saulter, that is not Mr. Magaha, is it? A. That is not his name, no.

Q. We will take one dated— A. That is, in his opinion.

Q. You don't know whether your insurance company had to pay for these or not? A. Yes.

Q. And you accepted these statements from your drivers, didn't you? And you filed them as part of your record, isn't that true? A. We turned that report in to our insurance company.

Q. Now, there are occasions when drivers make a (527) report and your insurance company refuses to pay and you are sued, isn't that true? A. Correct.

Q. And on those occasions your drivers testify in court on behalf of the insurance company, don't they? A. Right.

Q. We will take November 18, 1935. Who is to blame for that collision? You don't know whether your insurance company had to pay for that one or not, do you? A. I don't know; I can't tell you.

Q. Then we will take one dated November 1, 1935. Who is to blame for this collision? C. O. Magaha. That is the second one that he assumes responsibility. Now one dated September 30, 1935. Who is to blame for that collision, C. C. Lewis; then that is not Mr. Magaha? A. No. That is according—

Mr. HUGHES: Who said Lewis was to blame?

Mr. BLUM: This is the report that the company accepted as a record.

September 21, 1935. Who is to blame for the collision? No answer.

August 21, 1935, who is to blame for collision? A. J. Nicholas. Do you know whether in any of these accidents there had been damage to your bus?

(528) The WITNESS: I can't answer that offhand.

Q. Do you know whether in any of these accidents your company had to recover damages for injuries to your bus? A. We haven't recovered any damages, and we should have but we haven't.

Q. In some of these accidents? A. I can't tell you about those particular ones.

Q. August 8, 1935, who is to blame for collision, Mr. Magaha.

Now, July 28, 1934, who is to blame for collision—taxi.

Now, December 3, 1935, who is to blame for collision, Mr. C. Magaha.

January 26, 1935, who is to blame for collision—no statement; and the same is true of January 28, 1935.

Now, having this record of accidents from January, 1935, down to December, 1935, when most of these have occurred, did you attempt to fire Mr. Magaha for those accidents? A. I did fire him.

Q. In March of 1936? A. Yes.

Q. Isn't that true? A. Yes.

Q. And in firing him in March of 1936, you took into (529) consideration an accident which occurred in 1934? A. No, in 1935. I might have.

Q. Well, there is one July 28, 1934, and that was taken into consideration when you fired him in 1936? A. Those accident reports, along with other complaints that I have.

Mr. CARMODY: May we recess for ten minutes?

(Whereupon a short recess was taken.)

By Mr. BLUM:

Q. Now, the accident report of Mr. Ray Stanton: You say he was only in your employ for a short period of time? A. Yes, sir.

Q. Now, what period of time was he in your employ? A. I can tell you the exact time.

Q. All right. A. January 8, 1936.

Q. Now, he reported his first accident on January 20th, 1936, and that accident was a man had lost his glasses when the door was closed on him, wasn't it? A. I wouldn't put it that way; he lost his glasses. The door was closed in the man's face, and his glasses knocked off, and the man's nose was even hit, and he shut that

door and went ahead and didn't even stop to take that man on.

Q. Did you investigate the rest of this report, when he said that the bus was so crowded he couldn't see when (530) he closed the door? A. Yes.

Q. Is that possible on a bus? A. No, sir, it was not in that case. There was plenty of room in that bus for the passengers to go back.

Q. To go back, but did they go back, do you know? A. That is up to the operator, and he can get the people back so that the man can get in. This bus happened to be an early trip, when traffic is not so heavy, sir.

Q. Is it possible for the passengers to be so crowded in the front end of the bus, regardless of conditions, that the driver can't see when he opens the door? A. He wasn't closing the door.

Q. That is right, and is it possible that he couldn't see whether he was closing the door? A. He shouldn't close the door until he can see, to get the people back, sir.

Q. Now, Mr. England, will you please answer my question: Is it possible for the passengers to be so crowded in the front of the bus that when the driver opens and closes the door, he can't see on the outside? A. That is possible.

Q. Now, the second accident reported is on the next day. By the way, do you have any penalties on drivers (531) for an accident? A. Penalties?

Q. Yes. A. Dismissing them, if you call that a penalty.

Q. Well, did you dismiss them on January 20th? A. No.

Q. How long a period of time after an accident elapses do you usually dismiss a driver if you feel that the accident ought to be a cause of dismissal? A. We have dismissed them on the same day.

Q. On the same day? A. Yes, sir.

Q. And you didn't dismiss him until some time in March? A. No, sir.

Q. Now, the next accident that you reported was on January 21. The statement that he gave you was that the rear end of the bus collided with the side of the car, and the street was covered with ice, but I did not feel the bus skid. I think the car skidded into the bus. A. I think that accident was reported correctly.

Q. That was reported correctly? So if you accept

this report, you wouldn't have any excuse of inefficient workmanship from this report for firing Mr. Stanton, would you? A. I didn't say it is. You asked for them all, and I didn't want to hold them out.

(532) Q. These are the only two. A. That is correct.

Q. Now, with the report of Mr. Smith; how long was he in your employ? A. November 20, 1935.

Q. Now, the first accident he reports is January 17, 1936; who is to blame for collision?—A. F. Shortridge. That is the driver of the other car, isn't it? A. I assume it is.

Q. January 16, 1936, who is to blame for collision? Carl Middekamp. Who is that? The driver of the other car? A. The driver of the other car.

Q. Now, February 4, 1936, who is to blame for the collision? S. Smith. And he gives the reason: "I was going down grade on 11th Street. This cab stopped in front of me, I could not stop and hit his left rear fender."

If you were taking Mr. Smith's accident record into consideration, you could only consider the one accident, is that true?

Mr. HUGHES: I object. Why couldn't he consider the other accidents, Your Honor?

Mr. CARMODY: He could ask him whether he did or not.

The WITNESS: Certainly I could.

Mr. HUGHES: It doesn't make much difference whether he was right or wrong.

By Mr. BLUM:

(533) Q. Is there any other driver in your employ at the present time who has a large accident record? A. I can't recall offhand.

Q. Do you know offhand whether there is any man who has a record of over five accidents? A. I wouldn't like to say.

Q. Do you know whether there is any such driver? A. There may be.

Q. They are not discharged, are they? A. They might be.

Q. I am not talking about those in your employ, now. A. No.

Q. Now, you heard Mr. Arnold testify here the first day, didn't you? A. Yes, sir.

Q. Did you hear Mr. Arnold say that he was rather proud of his accident record, and as a matter of fact, that his rates had been reduced because he was remarkably free from accidents? A. That is correct; could I say something on that?

Q. Yes. A. We don't keep men with us that have accidents?

Q. What was that? A. We don't keep men with us that have accidents.

Q. How long did you keep them after the accidents? (534) A. It depends on the accident.

Q. I see. Now, do you ever keep a man three months after an accident if you feel that an accident is sufficient to discharge him? A. That depends on conditions.

Q. What kind of conditions? A. Other complaints.

Q. Other complaints? A. Yes.

Q. Do you have any other complaints about other drivers that are now in your employ?

Mr. LYNCH: That is entirely immaterial and irrelevant, may it please the Examiner. After all, the question here isn't whether they have made a mistake. Truly everyone may be able to make mistakes from time to time in dismissing or keeping on various employees, but the only question here is whether or not these people were dismissed by reason of union activities.

Mr. BLUM: And discrimination.

Mr. LYNCH: Yes.

Mr. BLUM: And if there are other people in the employes there is discrimination.

Mr. LYNCH: That means discrimination by reason of the fact that they have joined a union. He may have two people in his employ, one a relative and one not a (535) relative, and he may discriminate against a relative or for the relative, and he may have a person that may be late once, and another late ten times, and may keep him by reason of the efficiency of that employee,

and it may be an accumulation of things, such as being late, and a worse offense of being intoxicated around the premises, and yet they may keep that person on by reason of his efficiency in other respects, for instance, like a good mechanic, and he may very well have been retained by reason of certain things, but when you take it all together, that is the question submitted to the Board, whether they were right or wrong, but whether or not they dismissed them not because of any union activities.

Mr. BLUM: My question is certainly directed along the line of similar complaints against similar people in the same employ, and now if by reason of the fact that certain things prompted them to dismiss these men, as being inefficient, certainly those same things ought to prompt him to dismiss men who are guilty of the same complaints, and if he failed to do that then there is certainly a discrimination.

Mr. HUGHES: There hasn't been any *questioned* asked, so far, indicating that these other men who are retained are non-union men, so how could the discrimination charge ever arise unless they are non-union.

Assume that they keep all of the union men, and (536) there is testimony that 58 are union, and 20 have been fired, so there couldn't be discrimination except with respect to the difference between 49 and 80. There is no testimony that the man that is kept on is one of the non-union men in the latter group, so I can't see why that testimony has the slightest bearing on the case.

Mr. CARMODY: I don't think it is important here. The witness has not yet testified that he discharged any of these men for any of these accidents, or any of these men for any specific complaints.

Now, I think that is more important than finding out why he kept some men whose records we don't have here.

By Mr. BLUM:

Q. H. M. Hall was a driver, wasn't he? A. Yes, sir.

Q. And one of those that was dismissed? A. That is right.

Q. Did you bring his accident record out? A. No, I did not.

Q. Does he have an accident record? A. I don't think he has had an accident.

Q. You didn't take into consideration any accidents that he may have had? A. No. I didn't take his accidents into consideration.

(537) Q. In addition to these reports which were introduced in evidence here, which had several statements about Mr. Hall, what else did you take into consideration in dismissing Mr. Hall? A. Mr. Hall?

Q. Yes. A. Well, I wouldn't like to bring Mr. Hall's name into it, but it would involve his wife.

Q. You had some reason for dismissing him, didn't you? A. Yes, sir.

Q. Besides these reports, you said. We want to know those reasons. A. Mr. Hall's wife called me on several occasions, and told me that he was running around with a woman, and we had that information from some other party, that he was riding her on the bus and not collecting any fare from her, and that had just about broken up this home, and she went so far as to ask me to dismiss him and see if I could help break that condition up, and I talked to her and I told her I would try to straighten it out without doing that, you see, but talking to him didn't do any good.

Q. So did you dismiss him in order to keep him together with his wife? A. That, along with other things.

(538) Q. What are the other things? A. The report that stands there for itself.

Q. That report, and the fact that his wife called you and wanted you to dismiss him from the job, in order to keep his home together?

Mr. LYNCH: He didn't say that. He said that he had a report that he was riding another woman.

The WITNESS: He wasn't collecting fares from her. If he is riding somebody on the bus continuously talking to her and not collecting fares from her, that certainly gives us reason.

By Mr. BLUM:

Q. Did you dismiss him for not collecting fares from this particular party? A. I—

Q. Did you tell him? A. I did not.

Q. Did he know that? A. I couldn't tell you whether he knew.

Q. When was it you first took up with him this question of riding this woman without any pay? A. I judge some time in December.

Q. December of 1935? A. Yes.

Q. Did you speak to him any time after December (539) about this situation? A. I spoke to him on several occasions, and I couldn't tell you the exact dates.

Q. When was the last time? A. Some time in this year, I couldn't tell you when the exact date of that was.

Q. Was it during the month of January? A. I would say possibly, yes.

Q. Do you know whether or not that situation cleared up after you spoke to him? A. I do not think so. I had the second call from his wife.

Q. When did she call you the second time? A. I just couldn't give you that date.

Q. Was he living with his wife at that time? A. As far as I know.

Q And did you dismiss him as soon as you got that second call? A. No.

Q. You dismissed him on the same day that you dismissed the other drivers, isn't that true? A. That is correct.

Q. Why did you pick that day to dismiss him for these other reasons that you had? A. One day was as good as another, sir. I had then finished what we had (540) started out to do in December, of hiring other men and breaking them in, and I was ready to replace him.

Q. How many extra men did you have at that time, March 5th, of 1936? A. I can't call off just exactly how many we had. I imagine that we had around six to eight.

Q. Six to eight? A. Yes.

Q. If on March 5th, a strike had been called, and all of your men had walked out, would all of your buses have been manned, or would you have personnel to man all of your buses? A. No.

Q. Now, who was breaking in these bus men? A. Who was breaking them in?

Q. Yes. A. Mr. Kaylor takes them out first and has been in the past six or seven months, taking a man out

first and seeing if he could drive, and the reason we have placed Mr. Kaylor to do that was that Mr. Kaylor used to be a bus driver himself and knows all of the routes and he knows all of the fares, although he does not take him over any routes himself, he takes him out to see if he can double clutch and if he is worth while for us to start that man to breaking in. Then—

(541) Mr. CARMODY: What kind of equipment?

A. One of our buses, sir.

Mr. CARMODY: Empty?

The WITNESS: Yes, and no passengers at all.

Then, after he has satisfied us that the man is capable of taking that bus out with passengers on it, with an instructor, that man is turned over to Mr. Henry Willett.

After he has him the first day, he very often turns him down, because he has had them all day to observe different things, and he takes them and tells them a good many things, and drives himself, and doesn't let them drive for a while, and when a part of the day gets light, and he gets out to the far end of the line where traffic is light, he gives him the wheel, and if in his judgment he feels that the man is competent to drive the bus on down town, he lets him do so, and he *many* only let him bring it to Rosslyn or Georgetown, and when he gets in the heavy traffic for the first day or two, for the first few trips, he may bring it on down through the traffic on K Street, and 12th Street.

By Mr. BLUM:

Q. On the day that these drivers were fired, did you have any new men immediately ready to take over their buses? A. Did we?

(542) Q. Yes, sir. A. Yes, sir.

Q. When were those men ready? Did you take any new men or did you take your spare drivers? A. We took the men that we had been breaking in.

Q. Let us get on. So much for Hall.

Now, you didn't bring any accident report down for West, did you? A. West, accident reports?

Q. No. A. No.

Q. What was his record with respect to accidents? A. He doesn't have any.

Q. And the only point that was mentioned in these particular things was the fact that he missed on two occasions, a 10 cent fare; isn't that true, in these reports? A. That is true.

Q. What other things did you take into consideration when you dismissed him? A. I have had some other complaints.

Q. From whom? A. I couldn't tell you. We have a great number of complaints that we never find out who they are. People call us up and they won't tell us, and they give us the time and the number of the bus so we can check up, but they often don't give the name.

Q. Do you ever dismiss your men on the basis of anonymous complaints? A. We have, yes.

(543) Q. Do you give them a chance to be heard? A. Yes, sir.

Q. Did you call Mr. West in and confront him with these complaints? A. He has—I think I have spoken to Mr. West on an occasion or two.

Q. When was the last time you spoke to Mr. West? A. I couldn't tell you.

Q. Was it this year? A. I couldn't tell you that.

Q. You don't remember whether it was this year or not? A. No.

Q. And the only thing you have in a written form, so far as a record is concerned, is these two instances here when he missed a 10 cent fare on each occasion? A. The record stands for itself.

Q. Mr. Magaha, you brought his accident record in, and I understand that there are one or two statements in there about his having missed a 10 cent fare or something of that sort. What else did you take into consideration when you fired him? A. In addition to the acci-
(544) dents, and what is in that report, at a meeting we had in December, Mr. Magaha took a great offense to Mr. Arnold's general talk to the drivers, which he has often had.

Q. Was that in December? A. Yes, and as I am going to call this to your attention, these men would have all been gone long ago if the weather conditions had permitted us to break in other men, break in new men.

Q. When did the weather conditions get such that

your company started breaking in new men? A. We had about two weeks of good weather in my recollection, in the middle of January, and the latter part of February, we had some more good weather, and the bad weather started in about December 21.

Q. You had two good weeks in January, and didn't you testify that it only takes eight days to break in a new man? A. Yes.

Q. Why didn't you do it then? A. You can only break in one man at a time, and you can very seldom break in two men at a time. We have different men, and we have seven or eight different routes, and we have a man on each route, and that man is turned over to him day after day, and they go. We might not have just had the proper men to break in. We broke in a (545) number that we did not keep. You only get about one out of every five.

Q. Did you break anybody in in January? A. We started to, and I can't say whether we finished anybody in January.

Q. Did you break anybody in in February? A. We did, yes.

Q. Did you have anybody ready in January to take somebody else's place? A. We was getting them ready, yes, and I can't say whether we had them just ready or not.

Q. In the two weeks good weather that you had in January, did you have a man ready to take somebody else's place? A. I might refer to our records.

Q. You can't recall that? A. No.

Q. In February, when you had two weeks of good weather, did you break in anybody, or have anybody ready to take anybody else's place? A. Yes, sir.

Q. Why didn't you dismiss somebody in February and give this man a job? A. Give what man a job?

Q. The man that you had ready. A. I probably mis- (546) understood your question. We didn't have them ready, but we were getting them ready in January.

Q. Getting them ready in January and in February? A. Yes, sir.

Q. Had you done any getting ready of men in March? A. Let me add something to this. In January, when we had some men ready, we had seven or eight sick men and we used those men to fill their places.

Q. Those men were qualified drivers, weren't they? A. Yes.

Q. Now, when the sick men came back, why didn't you discharge these men and put them back in their places? A. They didn't all come back at one time, and we strung them out clean up until the first of March.

Q. As fast as one would come back you would have an extra driver, wouldn't you, as fast as one of your sick men came back? A. As fast as one man got well, another one would get sick, and we had quite a spell, and their sick benefit showed that.

Q. How many drivers did you say you had ready? Seven or eight in January? A. I said we kept six to eight on hand.

Q. Did you ever have as many as six or eight men sick in one week? A. Yes, sir.

(547) Q. You did? A. Yes, sir.

Q. Was there any time during January or February, when you had less than six or eight? A. We had them reported off for sick, and I understand that it wasn't all really sickness.

Q. During the months of January and February, was there any time when you had less than six or eight men off? A. January and February?

Q. Yes. A. Any time less? Perhaps there was. You might be sick today and another one would come back tomorrow, and then be off two days or four days.

Q. On the days when you had less than six or eight men off, would you have any extra drivers on hand? A. From six to eight men on.

Q. When you had less than six or eight men off? A. Did we have any extras on hand?

Q. Yes. A. Sometimes.

Q. Why didn't you fire some man during that time and give one of these men a place? A. Certainly it wouldn't have been a good business when you knew that these men were sick and off, and we had men come back (548) and try to make it, and we had one man who worked a few trips in the morning, and then called up and said "I couldn't make it, and I believe I had better go home," and that happened on several occasions, and we waited until we would get that routine back, where it should be.

Q. When you had these men sick, didn't you have any extras? A. Did we have extra men?

Q. Yes. A. Yes.

Q. When you put these substitutes on in place of the sick men, did you use your regular extra, or did you use the new men that you had just broken in? A. We used both.

Q. You used both? A. Yes.

Q. At some time when you used both, did you have any of these new men who were not working in a sick man's place? A. Who wasn't working in a sick man's place?

Q. That is right. A. Yes because they would work in people's places that had gotten off for other reasons than being sick.

Q. And at no time while you had these seven or eight men ready did you fire any of these men and give these new men their jobs? A. I didn't say that I had seven (549) or eight men ready, but there were extra men on the list.

Q. I understood you to say that you had seven or eight men. A. I said six or eight men on the extra list.

Q. All right. A. You have got to have those to protect your runs.

Q. Now we come back to Mr. Stanton, the driver that missed. All you had for Mr. Stanton were those two accident reports, one of which is admittedly not his fault? A. Yes.

Q. Now, there is no record in this detective report on him, is there? A. No, sir, he wasn't with the company then.

Q. What other things did you take into consideration in dismissing him? A. The numerous telephone calls and numerous complaints that I had on that gentleman.

Q. Of what nature? A. They come in very fast, and he was very discourteous to passengers, and gave them very abrupt answers, and I noticed his attitude around in turning in to the cashier, and he was always very loud, and he was different from the other men that we had, and he just did not fit into the organization.

Q. Well— A. I got a riding from Mr. Arnold one (550) day and he said, "That boy is not right, and he is out there hollering at the cashier, and he just don't belong around here".

Q. Well—when Mr. Arnold gave you this riding,

when was that? A. That was, to my best recollection, that was right around the last week in February.

Q. The last week in February? A. Yes, sir.

Q. And at the time Mr. Arnold was riding you, you had already formed a bad opinion of this man, hadn't you? A. I had, yes.

Q. Why didn't you fire him on that day? A. Why didn't I fire him on that day?

Q. Yes. A. For the simple reason it was right at the time, and I told Mr. Arnold, I said, "I am short of men, and I have got a lot of men off sick, and we just can't do just what we want to do at this time."

Q. That was the last week in February? A. That was the first of the last week in February, yes, sir.

Q. The beginning of the last week of February? A. Yes, that is correct, sir.

Q. Now, Stanley Smith: All you had on him was three accident reports, two of which he disclaims lia-
(551) bility, and no report from the detective. A. He wasn't working at that time,—yes, he was working when that report was made, and I don't think that there is any report. To my best recollection, the day that the line was ridden by that man, he was off, and he was not working, and that is why, perhaps, he wasn't picked up. That is either good or bad, whatever it might be.

Q. Now, when you received these telephone complaints about these various drivers, did you make a notation of it? A. For the time being, yes.

Q. What did you do with those records? A. As I have stated here, before, we didn't have an office force to keep all of those records.

Q. You didn't think it was important enough to keep? A. Oh, yes, I have. I have taken them as very important.

Q. Why did you destroy them or lose them? A. Because I was satisfied in my own mind—an accumulation of them—in my own mind what would be done, and what I would do.

Q. I see. You have a record in your own mind, now, of all eighty employees, and the complaints against them from various people. A. I wouldn't say all eighty. I could tell them individually, almost, sir, and tell you some things.

Q. Could you tell us the date of any particular com-
(552) plaint about these people? A. No.

Q. Did you make that notation on records that you kept? A. I didn't keep a record.

Q. Or the record that you made and then destroyed? A. It may have been a pad on the desk.

Q. And you made a notation of the date at that time? A. I may have.

Q. And you thought that the date was important then didn't you? A. I wouldn't say that I was sure that I made a date.

Q. What was the necessity of putting a date on, then? A. To remind you of the time you have taken phone calls, lots of times, and written down the phone call, or the time.

Q. And why did you destroy these records, then? A. Because they wasn't in such form that we could keep them.

Q. You are the general manager of the business? A. I am assistant.

Q. You evolve the system by which the company works, don't you? A. Yes.

Q. It would have been a simple thing for you to get up a form similar to the one you got up on these (553) road calls. A. It would have been a simple thing if I had had the help to do it.

Q. And you didn't think it was important to try to do that? A. It is very important, sir, and I am only sorry that we haven't had somebody to keep all of those records.

Q. That is right. You thought it was very important, didn't you? A. Yes.

Q. And still think it is very important? A. Yes.

Q. If that is right, why did you destroy your written memoranda? A. I may have some of them.

Q. You don't know, you wouldn't be able to put your hands on them? A. No, of course not.

You asked me for the truth, and that is what I am giving you.

Q. Who had charge of the hiring and firing of the drivers? A. I did, sir.

Q. Did you make up your mind that these six drivers had to go? A. Yes, sir.

(554) Q. You were the one that did that, yourself? A. Yes, sir.

Q. Did you discuss it with anybody? A. I have always discussed that with Mr. Arnold, that is, everything

we have ever done. I have been his assistant, and I have never done anything behind his back. He usually —if I suggest a thing, he usually thought I was right and let me go ahead with it.

Q. Before you discharged these six drivers, did you say to Mr. Arnold, that you were going to let these six men go? A. Yes, sir.

Q. Did he make any comment on that? A. Not particularly, no.

Q. Didn't say anything at all? A. We had discussed it, and it had been discussed since the 1st of December.

Q. When you heard about this union on February 28th, 1936, how did you hear about it?

Mr. LYNCH: That has been gone over before. I submit that it has been gone over before.

Mr. CARMODY: If he remembers what he said before, let us put it in here and it will refresh our memory a little.

By Mr. BLUM:

Q. How did you hear about it? A. It was brought (555) to me on Thursday night, February 27th, when I was on my way to a wrestling match.

Q. Now, did you since February 28th, 1936, discuss this union with Mr. Arnold? A. Certainly we have talked about it.

Q. Just what was your conversation about the union with Mr. Arnold? A. Well, I don't know. There was a lot of discussion between ourselves.

Q. What was your discussion? A. We just talked about it, whether it was a good thing or it wasn't a good thing.

Q. Did you decide it wasn't a good thing or a bad thing? A. We didn't decide.

Q. You just argued it between yourselves? A. Yes.

Q. Did you discuss whether you would recognize it?

Mr. LYNCH: That is a question of law, a question of whether they recognize it or not, if the Government says recognize it, just like filing an income tax, it is not whether or not you approve of an income tax.

Mr. BLUM: We have some men violating income taxes.

Mr. LYNCH: It is a question of what you are required to do, and it isn't a question of whether you like it or not.

(556) Mr. CARMODY: We may be confused about the meaning of the word "recognize".

Mr. BLUM: Now, did you and Mr. Arnold discuss whether or not if any terms were presented to you, you would discuss that with the men that presented it to you?

Mr. HUGHES: That is objected to, first of all, Your Honor, because there is no statement as to what time the discussion occurred, whether before or after the charges were filed.

Mr. CARMODY: He said on the 28th.

Mr. HUGHES: You are asking him whether on the 28th of February?

Mr. BLUM: And any time thereafter.

Mr. HUGHES: That might be right up to date.

Mr. BLUM: That is right.

Mr. HUGHES: What does it matter what is his attitude today or yesterday?

Mr. BLUM: From February 28th to March 5th, did you have these discussions?

Mr. LYNCH: On the further grounds, it is immaterial and irrelevant. It doesn't have anything to do by virtue of whether these men were fired, because of union activities, whether they think a union is a good thing or a bad thing; it doesn't enter into this question.

Mr. CARMODY: Well, I should think that the witness (557) who discharged these men might be permitted to

say whether or not in recommending their discharge to his general manager, he mentioned the union or discussed the union or their connection with the union.

Mr. HUGHES: We have no objection to that.

Mr. BLUM: Will you answer that question?

The WITNESS: May I ask you to ask me that question again?

(The question was read by the reporter.)

The WITNESS: We did not.

Mr. HUGHES: The answer is "We did not"?

The WITNESS: Yes.

By Mr. BLUM:

Q. When you fired these drivers, how did you tell them that they were fired? A. I called them in the office, and I told them that their services were no longer needed, and I think each one of those stated that the other day, in just the exact words that I used.

Q. And they very meekly accepted their envelopes and left?

Mr. HUGHES: I object to "meekly".

Mr. BLUM: I will withdraw that.

By Mr. BLUM:

Q. And they just accepted their envelopes and left?

(558) A. That is correct.

Q. They didn't question you at all as to why they were dismissed? A. One man did.

Q. Who was that one man? A. H. M. Hall.

Q. What did he say? A. He wanted to know why.

Q. What did you tell him? A. I told him I couldn't tell him.

Mr. CARMODY: You told him why?

The WITNESS: He should know why himself. I couldn't tell him why.

By Mr. BLUM:

Q. What did you mean when you said he should know why? A. From the telephone calls he had from his wife, and the report that that he said in that office, and denied that he never did, and then when he found out and made a statement on the stand and said himself, that when he found out that we had the goods so straight on him, he had to admit that he was lying to us.

Q. And that was only on that one occasion, about talking to the passenger, that he admitted that he wasn't telling the truth? He never admitted that he told you an untruth about this woman on the bus, did he? A. Yes, (559) he denied that, and he has always denied that.

Q. Did he ever admit that his denial was an untruth? A. No, he has never admitted that.

Q. That is right. Now, you didn't have charge of firing the mechanical force, did you, or the garage force? A. No, sir.

Q. You say that the washers, Dove, Moore, and Garrison, were fired because of their inefficiency in keeping the bus clean? A. That is my best knowledge and belief, that I was riding Mr. Wilsey, and Mr. Arnold was riding me for not getting these buses cleaned.

Q. These buses, the complaint about the uncleanliness of the bus was that the inside of the buses that they were complaining about? A. Yes.

Q. As a matter of fact, wasn't Moore and Garrison employed only for the purpose of washing the outside of the bus? A. I wouldn't say particularly on the outside. A man who works on the outside can certainly clean on the inside. They have cleaned on the inside.

Q. Did you ever see them clean on the inside? A. (560) Yes, sir.

Q. When? A. I couldn't tell you the dates, and I have been there so many nights that I have seen them working on the inside.

Q Isn't Dove the only man assigned to cleaning the inside of the bus, and the other two cleaning the outside? A. Dove? He has just been there very recently, and he was only there less than thirty days.

Q. And since he has been there, isn't he assigned to cleaning the inside of the bus? A. He may have been.

Q. Isn't there less cleaning on the inside than there

is on the outside? A. There should be more particularly on the inside.

Q. But isn't there more cleaning on the outside than there is on the inside? A. That would depend upon the weather conditions, whether it was a rainy day, or a clear day.

Q. Wouldn't it require more man-hours to clean the outside than it would to clean the inside? A. No.

Q. It would not? A. I don't know where you would ever get that idea, anybody that knows anything about (561) cleaning, the people on the inside, and the outside, they don't come in contact with that.

Q. Did these three men—how many buses did they have to clean in a night? A. I can't answer that.

Q. Did they have to clean all that came in? A. I couldn't tell you that. That is not my business.

Q. Did you see a letter sent by representatives of the union, addressed to Mr. Arnold, very recently; did you see it? A. Yes.

Q. You did see it? A. Yes.

Q. Where did you see it? A. Where did I see it?

Q. Yes. A. The letter I think you are referring to—

Q. How many letters have you seen? A. Only one that I know of.

Q. Now, would you remember the contents of the letter if I showed you a copy? A. I think I would.

Q. All right. Is that a copy of the letter that you saw in the office of the Arnold Company? A. Yes, sir.

(562) Q. Do you have any idea when that letter was received, or when you saw it? A. I know it was received, sir.

Q. When was that? A. On Saturday, March 7th.

Mr. HUGHES: We object to any cross examination on this letter unless it is shown that it was prior to the dismissal of these men, received prior to the dismissal of these men, because it doesn't seem to have any bearing on why they were fired.

Mr. BLUM: That is all.

Mr. CARMODY: There was no answer to that. I suspect that is equivalent of what?

Mr. LYNCH: Before the dismissal of these employees—

Mr. BLUM: I just want to have this letter marked for identification.

(The document referred to was marked for identification Board Exhibit 8.)

By Mr. LYNCH:

Was there a discussion between you and Mr. Arnold before the dismissal of these employees, about the information that had come to the effect that the buses would not be running on Saturday, February 9th? A. There was.

Q. And was information also received and dis-
(563) cussed between you and Mr. Arnold before the dismissal, as a fact, that a bus would be run off the road? A. Yes, sir.

Q. Were all of those facts and information and records taken into consideration at the time of the dismissal of these men? A. Yes, sir.

Q. I think that there was one question that you can tell me, if you have already answered it, about Mr. Crissman, about the time that he missed. Can you testify as to that? A. No. I didn't testify to his missing.

Q. Can you recall if any misses were made by Mr. Crissman, that is, failure to report for duty on time? A. He calls up, and he didn't miss, but he called up sick on the morning of February 29th, Saturday morning, after checking up, and I checked up that, and that was due to his activities on Friday night, and he was sick and not able to come to work.

Mr. CARMODY: These bus drvers live in a goldfish bowl, don't they, in most companies, and not much of their private life that isn't brought out by your checkers and investigators, and spotters, is there?

The WITNESS: I suspect so.

Mr. CARMODY: That is brought out in our investi-
(564) gation of bus companies, and that is their business, and they probably know it as well as the management.

Mr. LYNCH: That is probably true of most public utilities, that they are required to be a little more careful than other skilled mechanics.

Mr. CARMODY: I don't know that it applies to public *utilies,* but it applies to transportation companies, and it is pretty general on the railroads, and the only difference that I see in the railroads and the buses is that on the railroads, before a man is dismissed, he gets a hearing, and that is regular practice, and it isn't something that he pleads for, and it is a regular, established, practice, and he is faced with the charges in the presence of a representative of his own choosing, and he gets a record of a hearing at that time, and if he is not then satisfied with the decision, he may appeal it to a regularly constituted Board, which is set up in the transportation industry.

That is the only difference that I see. Otherwise he is subject to the same checking up on his turning in of cash and attention to duties, and Rule "G", which is the rule against drinking, is very severely enforced on all railroads.

Mr. LYNCH: I don't know whether the new Bus Act, which is in Congress, or just about to get out of Con-
(565) gress, provides for that same kind of hearing or not.

I know that there is a great deal of agitation about it because I used to be with one of the Public Utility Commissions myself.

RE-DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. England, there is one other question, and then I am through with this examination, so far as I am concerned.

Should a driver close a door until he knows that any passengers may be alighting or departing from the bus or completely safe from contact with the door?

Mr. BLUM: Objected to.

Mr. LYNCH: It is a fair question, in view of the question raised.

Mr. CARMODY: I didn't hear the question.

Mr. LYNCH: The question is whether or not the driver should close a door while the passenger may be alighting or may be departing from a bus, when he can't see whether they are actually clear or not.

Mr. CARMODY: I got my head squeezed in one of the Capital buses here on 15th and L Street, and I don't know whether the man saw me or didn't see me, but I got my head squeezed, and I finally got in and paid my fare.

There is a white line on those buses, back of which passengers are supposed to stand. Do you have a white (566) line on your buses?

The WITNESS: No, sir.

Mr. LYNCH: Answer that question.

Mr. CARMODY: He answered that they do not have a white line, and there is no line back of which the passengers must get before they close the door.

Mr. HUGHES: Mr. England, it has been testified to here by you, that on the report of the investigator Mason, Mr. Berry's name appeared.

The WITNESS: Mr. Berry?

By Mr. HUGHES:

Q. And he was marked "O. K." and he was not fired. Do you happen to know whether he is a union man or not? A. I rather think he is.

Mr. BLUM: I object to that and move it be stricken out. It is merely a thought, and he doesn't know.

Mr. CARMODY: You can ask him whether he was or not. Do you know?

The WITNESS: I do not know.

Mr. BLUM: I moye that it be stricken out.

Mr. LYNCH: Do you hav the names of the union members?

Mr. BLUM: I don't have them.

By Mr. HUGHES:

Q. Mr. Saulter, wasn't he fired either; was he a union man or not a union man? A. I don't know.

(567) Q. And Mr. Reynolds, do you know whether he was a union man? A. I do not know.

Q. Now, when I say "do you know" have you reason to believe. I know you are not the secretary of the union. A. I have reason to believe that he has joined a union.

Mr. BLUM: I move that be stricken out.

Mr. HUGHES: It has been testified to here, Your Honor, that these men were fired, and the other men were fired, by reason of a discrimination against union men, and now here are a number of men who are not fired, and they had some marks against them, or are mentioned at least in the report, and I want to find out whether they were union or non-union men, to see whether there is a discrimination.

Mr. CARMODY: If he thinks they are, that is not admissible.

Mr. HUGHES: But the question is not the absolute fact, but whether or not at that time he thought that they were union men, and if he thought they were union men, at that time, it would be persuasive evidence of the fact that he wasn't discriminating against union men in firing the twenty men that are charged in this complaint.

(568) Mr. BLUM: I submit that that certainly is not proper because on direct examination it has been directed to the fact that these men were not fired because of their union activities, and if that is true, certainly Mr. England is not interested in knowing or testifying whether or not they are union men and he is firing them for their inefficiency, and the question of whether or not they are union members does not enter.

Mr. HUGHES: We stand on the question.

Mr. CARMODY: The question may be answered this way: If he knows, he may say, and he may not answer what he thinks.

You yourself have raised many objections to people answering what they think, and I have learned a lot from you about evidence. That is one of the things I have learned about.

Mr. HUGHES: I will ask another question, then, Your Honor.

Mr. BLUM: I move that his last answer be stricken. It is in the record, he said he had reason to believe.

Mr. CARMODY: That is stricken, and we are back to the question of whether or not he knows.

Mr. HUGHES: We take an exception, and I will ask him this question:

Prior to the men being fired, did you believe that Mr. (569) Berry was a union man?

Mr. BLUM: Objected to.

Mr. CARMODY: On the same grounds, sustained.

Mr. HUGHES: Exception.

That is true with reference to Mr. Saulter and Mr. Reynolds?

Exception will be taken.

Now, how about Mr. Crissman?

Mr. BLUM: Objected to.

Mr. CARMODY: If he knows, he may answer if he knows that he was a union man or if he knew at that time.

Mr. HUGHES: Mr. Dinkle, he quit.

Mr. BLUM: I object to that. The question is, "do you believe"?

Mr. CARMODY: The answer must be whether he knows or not because we are sustaining the objection and entering the exception to the original question, and allowing the answer to the question as it was revised.

Mr. HUGHES: Mr. Tingstrum, did you believe that he was a union man prior to the firing?

Mr. BLUM: Objected to.

Mr. CARMODY: Sustained.

Mr. HUGHES: Exception.

Mr. Reid?

Mr. BLUM: Same objection.

Mr. CARMODY: What is the form of the question?

(570) Mr. HUGHES: "Did you believe that Mr. Reid was a union man prior to his being fired?"

Mr. BLUM: Objected to.

Mr. CARMODY: Sustained. May we not have the objection, and the exception, to all of them in that form, and that will save time and go to the other question, if you wish to ask it.

Mr. HUGHES: I will ask the same question as to whether you believed at the time the men were fired, they were union men, as to the following men:

Berry, Salter, Reynolds, Crissman, Tingstrum, West, Landis, Armentrout, Havenner, Reid, Clayborne, Hancock, Magaha, Harris, Devers, Hartman, Stanton, Smith, H. M. Hall; and I think that completes them.

Mr. BLUM: Same objection.

Mr. CARMODY: Sustained.

Mr. LYNCH: Exception.

Mr. HUGHES: Now, it has been testified to here that over a period of months you had men on the extra list, and were training them—

To save time, we will withdraw that question, Your Honor.

Mr. West, who was fired, as I understand it, did you ever hear in connection with Mr. West, that he had put out some story about the relief association prior to the (571) time he was fired?

Mr. BLUM: Objected to.

Mr. HUGHES: Did you take that into consideration, among other matters, in firing?

The WITNESS: I did.

Mr. HUGHES: What is that story?

Mr. BLUM: I object to that unless from whom it was heard.

The WITNESS: I am going to tell what Mr. West came to me with. Mr. West came to me about the 1st of January, and wanted to get rid of the relief fund, and I asked him why, and he said he thought somebody else ought to be secretary of it, and he had it long enough, and so he was in my office on several occasions talking about it, and there wasn't anything done about it, and going out through the office, around the 25th of February, and when he left my office and went out through the front office, I heard somebody ask him, "How about me getting a check?" and the remark that I heard was, "You needn't worry about that. There won't be any relief fund in a few days" and I wondered what he meant by that.

Mr. CARMODY: Who asked him that question?

The WITNESS: One of the boys on the outside of the cage, and had been off sick and was due a check to be off sick.

(572) Mr. CARMODY: And did you recognize the voice?

The WITNESS: The party that asked him? I couldn't say that.

Mr. CARMODY: Did you recognize West's voice?

The WITNESS: I did because he was closer to me and had not entered—he was between the cage and myself.

Mr. CARMODY: That is all.

By Mr. CARMODY:

Q. What is this relief fund that you speak of? A. The relief fund is a fund that the boys have within their own organization, drivers and mechanics, and they put in $1.00 a month, $12.00 a year.

Q. Each of them? A. Yes.

Q. Married and single alike? A. Yes, sir; and I might say when they started this, they put up $2.00, before there was anything taken out, so that when a new man comes, they charge him $2.00 in order to become a member, but of course as soon as he pays $2.00, if he is out a day, he is due for the benefits, and the benefits pay him so much a day while he is off sick, and pays his doctor's bill, which is a very fine thing for him.

Q. When was it organized? A. That was organized, (573) to my best recollection, the 1st of March, a year ago, and it has been operating about a year.

Mr. HUGHES: Do you want this on the record, Mr. Examiner?

Mr. CARMODY: We have gotten into this relief business here, and a man has been discharged because of a comment he made about it.

Mr. HUGHES: I don't object to it.

The WITNESS: As long as we are into it, I would add some more to that, and say that several boys have come to me and said, "Why, I understand the whole relief is going to be turned into the union" and I said, "Is that so" and I said, "I don't know a thing about that", but that has come to be the way it is, that they were go-

ing to lose what they had put into it, and that may have been in connection with the remark that I heard, that there wouldn't be any relief in a few days.

By Mr. CARMODY:

Q. How much does the company put into this fund? A. Nothing at all.

Q. Nothing at all; so that the fund is sustained entirely by the employees? A. That is right.

Q. Now, how much money is in the treasury? A. They run about $250 or $300 in the treasury.

(574) Q. How does this money get into the treasury? A. They have authorized me to take it out of their salary on the first day, or the nearest pay day of the 1st of the month, and I turn it over to one of their officials of the association, the secretary, or whoever they designate to take it to the bank and they deposit it, and they handle it all within themselves.

Q. Then the officers are all employees? A. Yes.

Q. Drivers and mechanics? A. That is right.

Q. There is no member of the company has anything to do with it? A. No.

Q. All you do is deduct the money from their salary by written authorization, or do they give you written authorization, or is it verbal? A. It is verbal.

Q. They have told you? A. Yes, sir.

Q. And you turn it over to the officers? A. Yes.

Q. Who do you turn it over to? A. I have turned it over to Mr. West. He was secretary at one time, and I (575) have turned it over to a Mr. Duval, who is not with us now, but was, I believe, signing checks along with Mr. West. There has always been two of them to sign checks.

Q. They have been countersigned? A. Yes.

Q. Who signs those checks? A. I think they did. I think that they had a meeting the other day, and formed a new set-up, and I believe that Mr. Harris and Mr. Kaylor are the two that sign checks now.

Q. Mr. Kaylor is the man who breaks in new drivers when they go out? A. Yes.

Q. Do you deduct from his wages, too? Is he on this? A. I have, yes, and I haven't deducted from anybody since they have set up the new organization, because we haven't had a pay day nearest to the 1st of the month.

Q. When did they set up this new organization? A. I think it was last week, and they had several men that had been sick, and they wanted to pay them.

Q. Were there any other men discharged besides Mr. West who were officers of that relief organization at the time? A. Well, who were officers?

Q. Yes. A. I just can't tell you, sir.

(576) Q. Did you know who the officers were? A. Mr. Duvald left our employ some time ago, and I believe they had Mr. Kaylor authorized to take his place until such time as the set-up could get together.

Q. And the company put nothing into this relief? A. I would like to explain that.

No, the company put nothing into this, in the relief, but when we built our garage in Clarendon, we turned our garage over to the boys to have a dance, and we furnished the advertising in our buses, and we had tickets printed, and no charge at all was made, and they had a very nice gathering, and a nice dance, and a nice little thing, and they collected around $300.00 and we gave it to them with that purpose, of forming a relief union, because we had had a relief union in one of our operations once before, and it worked out very satisfactory.

The dance was over, and they had the money, and then they turned it over to me and I put it in the safe overnight for them, and of course they sold tickets on the bus, and they collected it, and they sold a good many tickets the last night, and so I put the money in the safe for them, and I think maybe within a week after that, Mr. Arnold called the employees in, and we talked of the nice affair that they had, and how they had conducted themselves, and so forth, and we checked up and saw ex-

(577) actly how much money there was, so we asked them to go ahead and form the organization.

Q. Yes. A. Well, they talked over it pro and con, and the meeting broke up, and they didn't decide just what they were going to do, and my best recollection of that was that there were two or three meetings like that, and finally Mr. Arnold called a meeting one day, and he said, "Boys, I have got this money in the safe, and I don't want to be responsible for it, something might happen to it, and what do you want to do with it?"

So they took a vote on it, and they split it up among themselves, and took the cash, so they did not have a re-

lief, so as time went along, and the organization got larger, we suggested several times, and they suggested to us, a good many of them, that they should have that, so we finally got them together, and when they started this, they have started it all on th basis of the account.

Q. Who was the first secretary? A. Mr. West.

Q. And he continued to be secretary until he was discharged, to your best recollection? A. Yes, sir.

Q. Now, these benefits, how long was it necessary for a man to be sick before his benefits started? A. I think if he was off two days sick, why then he collected (578) for the time that he was off.

Q. The total time? A. Yes.

Q. That would be how much a day? A. They set it up on $2.40 a day, or $2.20 a day, until they could accumulate a little in the bank, and then when they did that, they felt that they would pay more, or I think they set that at $15.00 a week.

Q. What was this original complaint that Mr. West made to you about this relief, when he came in and talked about relief; what did he say? A. He said that he wanted to get rid of it, and that he had had it long enough, and he had been secretary, and he said, "turn it over to the night men."

Q. He wanted somebody else elected secretary? A. Yes.

Q. So that they could take care of the money, and he had to come to you and get the money as it was deducted from the pay roll of the various people, is that it, or did you go to him, or did you put it in the bank and give him a bank receipt? A. I turned it over to—I think I may have turned it over to Mr. Kaylor, who goes to the bank every morning, and he may have put it in the bank; I couldn't say.

Q. But as an accommodation you and Mr. Kaylor (579) helped Mr. West handle these funds and get the money into the bank, and how were the men paid—who gave them the $2.20 or $2.40 that they were entitled to? A. They kept their own books on that.

Q. And Mr. West and Mr. Duval signed a check for those men after it had been determined that they were entitled to the relief money? A. Will you let me explain something right here?

Q. Yes. A. Around about October, Mr. West came to me one day and he said,—Well, he was just all up-

set, and he said some boys here get more money than others, and we pay the doctor more money than we paid anybody else, and well, I said, "I just can't believe it. Give me your books and let me see how you are keeping your books, and maybe you have made some mistake", and so, when he brought his books in, they had a check book, and just the loose leaf book, with a lot of things written down in it, and so I said, "Give me your bank statement", and he did, and the bank book, and I went in the office, and spent quite a lot of time, and I checked up, and I found that he did have money in the bank, more than they thought they had; to be exact, I think it was $98 or $99, and so I said, "I will tell you what I will do. I will set up a set of books, the way it should be kept, and it is very simple, and I think you should.

(580) Q. Single entry or double? A. I won't say it was either one.

Q. Just a memoranda? A. It was a form that anybody could keep, and how much a man was putting in, and how much he paid the doctor, and how much he paid the salary himself and so it was a very simple form that anybody could keep.

Q. And then I got them straightened out on that, and in fact I have been keeping those books for them ever since, putting it down for them, and now I have turned it over to Mr. Kaylor, since they have made him secretary. But checking up, I found that they paid a man twice one month, and that is why they thought they paid too much money.

Q. Did you know whether this union has a relief fund or a benefit fund, that is before us? A. I don't know.

Q. Do you know whether any unions do that? A. I do not.

Mr. LYNCH: Is there anything further, Mr. Examiner?

Mr. CARMODY: I am through.

Mr. HUGHES: There is nothing further.

RE-CROSS EXAMINATION.

By Mr. BLUM:

Q. Now, Mr. England, on re-direct examination, you testified that on February 29, you received a notice that

(581) your buses weren't going to run the next day, that the buses wouldn't be running the next day. Now, where did you get that information? A. I had a telephone call from Mrs. England, that runs the terminal at 619 12th Street, runs a concession, and she said there have been six or seven ladies in here, who told me that they understood coming down on the bus that there would be no bus to go home on, and I said, "What did you tell them?" And I said, "Well, I don't think that there is anything to that, and I haven't heard of any trouble, and I don't know of anything, and I am sure that the buses will be running this evening.

Q. Did they tell you the names of the drivers that started that rumor? A. No, sir.

Q. They did not? A. No, sir.

Q. How could you take that into consideration in dismissing these drivers. A. How did I take that into consideration?

Q. Yes. You didn't know what drivers were involved in that rumor? A. No.

Q. How could you take that into consideration? A. I got that report also into our office, on eight or ten tele-
(582) phone calls, and maybe more.

Q. Did any of those telephones calls mention any names of drivers? A. No, but they mentioned the location.

Q. What? A. The location.

Q. Location of what? A. Of where the phone call was coming from, or what line; I will say what line, or what route.

Q. And does more than one driver travel the same route? A. Oh, yes.

Q. Now, did those calls come in from any routes gone over by drivers that weren't fired? A. I just can't recall.

Q. Then how could you take into consideration this matter, in firing these drivers? A. Take it into consideration in firing these drivers?

Q. Yes. A. All of the things that I have just told you, that these men were ready to be fired.

Q. I am talking about these rumors, and you said you took these rumors into consideration when you fired these men. How could you take those rumors and apply it to these particular men when you took it into considera-
(583) tion? A. Those things that we had heard about

buses being turned loose at the top of Picket's Hill with a load of passengers on, and those phone calls coming in—I didn't know what drivers was putting out that information.

Q. You didn't know? A. We had made up our mind, and that certainly came into our mind when we did what we did.

Q. Now, before February 29th, according to your previous testimony, you had already made up your mind what drivers you were going to fire? A. Yes.

Q. Then why did you say that a little while ago you took into consideration in firing them? A. I would say that that would help my mind along.

Q. And you fastened that immediately upon these six drivers, is that it? A. I didn't say that.

Q. You said you took it into consideration.

Mr. LYNCH: He didn't say it would fix it on these six drivers.

Mr. BLUM: That is what I am trying to get to. I say that you took that into consideration in firing these six men?

The WITNESS: As a whole.

By Mr. BLUM:

(584) Q. As a whole? A. Yes.

Q. And without having any means of pinning these rumors to them, or any other driver in your employ? A. Yes.

Q. Now, this rumor about the bus that is going to be run over the hill. Where did you get that rumor from? A. I just can't recall, but one of our own drivers came in and said that he heard the men talking about that, and just which one it was I can not say.

Q. Was it one of the drivers discharged? A. No, it was not.

Q. Then a driver that was not discharged? A. I feel sure it was not a driver discharged.

Q. Did they say it was a driver who was discharged was going to run the bus over a hill? A. I can't say that.

Q. Then how could you take that into consiedera-

tion in firing any of these six men? A. It was just one more of the things.

Q. But you said it didn't apply to any of these six men. A. I can't recall the names.

Q. You can't recall that it applied to any particular driver, can you? A. Not particularly.

(585) Q. Now, you had a list of driving accidents in your own mind as against these particular drivers, hadn't you? A. Yes.

Q. And you had reason to fire them, and as long as you listed them and can recall them if a question of running a bus over a hill had come up, in connection with one of these drivers, you would have remember that, wouldn't you? A. If I could have gotten his name, I would have.

Q. And you didn't get his name? A. I couldn't, and I didn't know it.

Q. How did you take that into consideration in fixing these six men? A. It is just one more of the same things.

Q. No explanation of it at all? A. I have given you an explanation.

Q. If I recall your testimony correctly, it was on the 15th of January when this Mr. West came in and told you he wanted to get off relief, isn't that true? A. From the 15th on.

Q. From the 15th on until when? A. I think he made that remark going out of the office if he is here, I believe he is present, up until that time I think he made that, that is up until around the 24th or 25th of February. He was in and out of the office on that same (586) occasion, and not only asked me when he saw me at the terminal, that he was anxious to get rid of being secretary.

Q. It was on the 25th of February, wasn't it, you say, when you heard him, or someone ask him the question? A. I wouldn't say exactly. I said about that date.

Q. About the 25th of February? A. Yes.

Q. That you heard somebody say to him, "How about me getting my check", and he said, "Don't worry about that; in a few days there won't be a relief fund". Is that true? A. Right.

Q. And then you heard other statements, you said, that the relief would be turned in to the union, is that true? A. Yes.

Q. When did you hear those statements? A. I have heard that—that has been rumored in the last two weeks.

Q. The last two weeks? A. Yes.

Q. When was the first time that you heard that? A. I would say about two weeks ago, and that would be around the 11th.

Q. The time that these men were fired, or after these men were fired?

(587) Mr. LYNCH: That is a mathematical calculation.

The WITNESS: After these men were fired.

By Mr. BLUM:

Q. Was that money turned over to the union, the relief money? A. I didn't say it was.

Q. This letter that has been marked for identification, and which you say you recognized as having seen in the office of the company, you also testified that you remember you saw it on March 7th?

Mr. LYNCH: He said it was received on March 7th.

By Mr. BLUM:

Q. You say it was received on March 7th? A. Yes.

Q. Wasn't it received on March 4th? A. That letter?

Q. Yes. A. No, sir.

Q. All right; that is all. A. The post office will show it. I signed for it. It has got the date right on the envelope.

Q. Did you remember the return receipt—do you have the envelope there? A. No, I haven't; you asked for it. You have it.

Q. The envelope was in your possession? A. But (588) the return receipt—

Q. Do you have the original envelope? A. I don't have it.

Mr. BLUM: I make demand on Mr. Lynch to have here tomorrow morning when we resume trial, the original letter and the envelope.

Mr. LYNCH: If we have it, we will have them both here tomorrow morning; and I make demand on him to

produce the signed receipt from the post office which shows the date it was received.

By Mr. BLUM:

Q. Who signed for that letter? A. I did.

Q. Did you notice to whom that return receipt was supposed to be returned? A. No, I didn't.

Q. Did you know it was to be returned to Mr. Harris? A. I rather expect it was.

Q. And he is still in your employ? A. Yes.

Mr. BLUM: I think that is all.

Mr. CARMODY: He has been on the stand a long time.

Mr. HUGHES: I want to ask a few more questions.

RE-DIRECT EXAMINATION.

By Mr. HUGHES:

(589) Q. Mr. England, you testified on direct examination by the Government, I think, that over a period of time you noticed the difficulty in—and more and more difficulty from September on through October, and November, December, and down through until February, and that you made up your mind some time in December or January, that you would do something about it; isn't that so?

Mr. BLUM: That is not a true statement of what was brought out. There was no question brought out about more and more difficulty. The difficulty about what?

Mr. HUGHES: Road calls.

Mr. BLUM: Specify it.

By Mr. HUGHES:

Q. Road calls were greater in number, and the service seemed to be less efficient, and things of that character; isn't that so? A. That is right.

Q. These rumors have cropped up this afternoon in cross examination, people *letter* buses go down the hill,

letting a bus go down the hill? Didn't those rumors lead you to believe that time had come for housecleaning, and you had to do something about the situation? A. It did.

(590) Q. At *lest* weren't they part of your conclusion, and weren't they part of the general state of facts that led you to believe that something ought to be done? A. Yes, sir.

Q. And that something should be done by the company to remedy the general situation? A. Yes, sir.

Q. That things were getting out of hand? A. Yes, sir.

Q. And so as a result of that, you determined some time toward the end of February, or in March, that you would clean house; isn't that so? A. That is right, yes, sir, and they were getting so bad that I was being rode from my superior, and I was trying to protect my job.

Q. You didn't seem to be getting the work out of the men that you expected, and the public was complaining, and everything generally seemed to be getting wrong? A. Yes.

By Mr. BLUM:

Q. Now, Mr. England, just one more question: You decided, when you heard these rumors, that things were getting out of hand, and therefore you ought to have a general housecleaning; is that true? A. Yes.

Q. Why didn't you fire all eighty employees and have (591) a general housecleaning? A. Well, you can't stop operations altogether, sir. We couldn't stop opertions. We are a public utility and we had to run our buses, and we couldn't fire them all at one time.

Q. They weren't all drivers, were they? A. If the weather hadn't been bad, they would all have been gone before.

Q. They weren't all drivers, were they? A. No.

Q. You also said that these rumors led you to go into this general housecleaning. Now, in view of your testimony previously, that you didn't know which men were involved in these rumors, how did that aid you in picking out the twenty men that you fired?

Mr. HUGHES: He didn't say it did. It led him to do something, which was to fire them all. He didn't say,

or he hasn't testified that these rumors led him to discharge any particular man, and all he said is that the rumors led him to do something, to make a houseclean-ing.

Mr. BLUM: I want to know why these rumors should lead him to pick out these twenty men.

Mr. CARMODY: He testified to the fact that that had (592) led him to do it, and that is the difficulty here.

The WITNESS: I didn't mention any particular men, no. I didn't mention their names.

By Mr. BLUM:

Q. Those rumors didn't lead you to pick out any particular men, did they? A. You said twenty men. I didn't fire twenty men.

Q. The company fired twenty men. A. Yes.

Mr. HUGHES: With respect to the six that you did fire, did rumors lead you to fire any particular one of those six?

The WITNESS: No, sir, only as a whole.

Mr. HUGHES: It simply led up to the solution which resulted, in all of them being fired?

By Mr. BLUM:

Q. How many drivers did you have at that time? A. Around fifty-three, or fifty-five.

Q. Why did you pick these six out of fifty-three if you couldn't pin these rumors on any particular man?

Mr. HUGHES: He has already testified, and we object to that.

Mr. BLUM: We would like to have the witness testify, and not you, Mr. Hughes.

Mr. HUGHES: I would like to explain my objection.

Mr. CARMODY: We are getting confused between wit-
(593) nesses and counsel. Let the counsel ask questions and the witnesses testify.

Mr. HUGHES: I would like to object for the purpose of the record, and I would like to point out that the witness has already testified that the men were fired for a number of reasons, and he hasn't testified that he fired these men because of these rumors, or any particular man, because of the rumors.

Mr. BLUM: He said he took them into consideration, and they are the very words he used.

Mr. CARMODY: That was in response to counsel's own question.

Mr. HUGHES: I want to clear it up.

By Mr. HUGHES:

Q. Did you take it into consideration, in respect of the fact that you had to fire somebody, or did you take it into consideration as a reason for firing any particular man? Let us have it clear, once for all. A. I was ready to do what I did, and when that time came, that was only piling things on that much more—

By Mr. BLUM:

Q. You mean to state that you had made up your mind to fire these six men, is that true? A. I fired them, yes.

Q. That you had already made up your mind to fire
(594) them at the time you got these rumors? A. The record shows that I was ready to fire them.

Q. And these rumors had nothing to do with their being fired, did they?

Mr. HUGHES: I object to the uestion. It depends upon what he means by it. It didn't have anything to do with firing a particular man but it did have something to do with firing all six of them.

Mr. BLUM: What was that statement of Mr. Hughes? I move that everything be stricken out.

Mr. CARMODY: Strike it out unless he wants to know if it applies to a particular man. Let us name the thing that nails the complaint to a particular man.

Mr. HUGHES: Exception.

Mr. BLUM: That is all.

(Witness Excused.)

Mr. LYNCH: What is the Board's pleasure about going forward? I have a few witnesses that will only take two or three minutes each. I would like to call Mr. Piper.

Whereupon WILMER PIPER was called as a witness on behalf of the Respondent, and having been first (595) duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. LYNCH:

Q. What is your name? A. Jack Wilmer Piper.

Q. And you are employed by the—

Mr. HUGHES: We ask Your Honor's permission to withdraw this witness at this time.

Mr. CARMODY: All right. We will recess just a minute.

(Whereupon there ensued discussion, which was not reported.)

(Thereupon, at 5:00 o'clock p. m., the hearing was adjourned to 10 o'clock tomorrow, Thursday, March 26th, 1936.)

(597) FOURTH DAY.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

FIFTH REGION.

In the matter of

Washington, Virginia and Maryland Coach Company and Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 1079 et al.	Case No. C-63.

Room 407, Denrike Building,
National Labor Relations Board,
Washington, D. C.

Thursday, March 26, 1936.

The above-entitled matter came on for hearing at 10:00 o'clock a. m., pursuant to adjournment.

Before: John M. Carmody, Member of Board.

Appearances: Jacob Blum, Charles Coburn, Arthur Reyman, For the Union.

Robert E. Lynch, Wm. J. Hughes, Jr., For the Company.

(598) PROCEEDINGS.

Mr. HUGHES: You have concluded your re-direct examination of Mr. England?

Mr. BLUM: Yes, I have.

Mr. HUGHES: Then I think a motion is in order to dismiss.

Mr. CARMODY: You are making that motion?

Mr. HUGHES: I would like to make a motion to dismiss, Your Honor, on the ground that the testimony in this case does not show either beyond a reasonable doubt or by preponderance of evidence or otherwise, that the respondent in this case was engaged in an unfair labor practice, or more particularly, attempted in any way to discharge and refrain from taking back these employees specified on the ground that they had joined a labor union, and still less that the company was discriminating or did discriminate in the hiring or tenure of employment of these complainants, and more particularly we say that in respect of all the complainants in the case, with the exception of Atwell, Bell, and P. Frederick, there is no testimony even from the Government to the effect that any of the men were fired by reason of their union activities.

We take Atwell's, Bell's and Frederick's testimony at its face value for the present, and for the purpose of this motion, and with respect to other complainants (599) there is not a line of testimony in the record to the effect that they were fired because of union activities.

Now, we have the positive testimony further of the Government's witnesses, Arnold, the president of the company and England, the assistant to the president, to the effect that they were not fired because they were members of a union, and that neither of them on any occasion told them that they were fired for that purpose, and therefore we think that the charges should be dismissed.

Mr. BLUM: I want to move that every word after the words "motion to dismiss" be stricken from the record, because it is purely argumentative and does not belong in the record.

Mr. LYNCH: I would like to add something to that, on the additional ground, may it please the Examiner, that the evidence not only fails to show that they were dismissed because they joined the union, but the positive evidence of the Government shows that they have been dismissed for other causes, which have been cited

here by the Government witnesses, and for which testimony they necessarily vouch to be correct and true.

It seems to me that as a matter of conclusiveness, that every possible person, with the exception of Atwell, Bell, and P. Frederick, that the motion would necessarily have to be granted, and as to those the preponderance of evidence, both from the persons that dismissed them (600) or separated them from the service, that they were not separated by reason of union activities.

Mr. BLUM: I want to renew my motion that all of the words after "dismiss" be stricken from the record.

Mr. HUGHES: Why should the argument be stricken; it has not been stricken so far in the case, and why strike it here?

Mr. BLUM: You are adopting an attitude here that is adopted in court procedure, and you know from your experience in court procedure that the argument never gets in the record.

Mr. HUGHES: I think a motion to dismiss here—

Mr. BLUM: I object to the argument.

Mr. HUGHES: It gives the grounds.

Mr. CARMODY: Strike from the record all argument, and I will allow to stand the motion to dismiss, and the motion is denied.

At the end of the hearing, if counsel wishes to do it, they may make oral argument, which, on the judgment of the Examiner, may or may not go into the record; or they may file a brief and be given a reasonable time to file a brief.

Mr. LYNCH: We would like to take an exception.

Mr. CARMODY: The exception is noted.

Mr. LYNCH: I would like to call Mr. Arnold.

(601) Whereupon JOSEPH ARNOLD was called as a witness on behalf of the Respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Your full name is Joseph Arnold? A. Joseph Arnold.

Q. And you are an employee of the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. You are the son of the president of the company? A. Yes, sir.

Q. And are you an officer of the corporation? A. Yes, sir.

Q. What officer? A. Vice-president.

Q. And do you own any stock in the corporation? A. No, sir.

Q. Do you collect any dividends? A. No, sir.

Q. You just receive a straight salary? A. Yes, sir.

Q. And your duties are what, Mr. Arnold? A. Well, Mr. England isn't there in the morning, or some-
(602) thing like that, and I just watch around the shop, and see if everything is going along all right, and perhaps I go out on the road, and I just check the boys in general.

Q. Do you hire and discharge people? A. No, sir.

Q. Mr. Arnold, on the testimony here regarding a certain meeting that was held, the date I don't recall right at the moment, was that February 28th, do you remember the meeting that you attended at Mr. Frederick's house? A. The date?

Q. Yes. A. I think it was on a Monday, let us see.

Q. That is the only meeting that you attended? A. Yes, sir.

Q. Some time around March 1? A. That is right.

Q. Were you asked to attend that meeting? A. On the Saturday evening by Mr. Frederick.

Q. Is that Mr. Frederick at whose house it was held? A. Yes, sir.

Q. And did you go there on a Monday? A. Yes, I went there on a Monday about 12:30 or a quarter to one.

JOSEPH ARNOLD.

Q. Who did you go there with? A. With a boy by
(603) the name of Mr. Hancock and Mr. Van Sise.

Q. Were both of them members of the union? A. Yes.

Q. Did you walk in with them? A. Yes.

Q. And when you went in there, did you speak to the men that you knew there? A. Yes.

Q. And you met him? A. Yes.

Q. Did you participate in that meeting in any way attempting to domineer it? A. No, sir.

Q. By the way, you had a driver's cap on, didn't you? A. Yes, sir.

Q. You are not a driver, are you? A. No, sir.

Q. There wasn't any question that everybody knew who you were? A. That is right.

Q. And there was no attempt to conceal your identity? A. That is right.

Q. How long were you there, altogether, Mr. Arnold, before you left? A. I would say fifteen minutes.
(604) Q. And who told you that it was not proper for you to be there? A. Nobody.

Q. You just left of your own accord? A. Yes, sir.

Q. Did you think that you had a right to be there? A. I was invited, and I don't see why there should be any secrets about not being there.

Q. Did Mr. Frederick or anyone show you the charter of the union? A. They handed me the charter and put it in my lap.

Q. Who did that, Mr. Frederick? A. Mr. Frederick.

Q. Did you look at it? A. I didn't have very much time, and Mr. Clark was explaining about this and that, and the only thing I saw, I actually saw, was just the British flag and the American flag at the top.

Q. Did you say anything to them about that? A. I wanted to know why *there* were mixed up there together.

Q. And what explanation did they give you to that?

Mr. BLUM: Objected to.

By Mr. LYNCH:

(605) Q. Was there an explanation? A. They said that they were mixed up with Canada in some way, and that "we were affiliated with the union in Canada" and

I don't know how he worded it, but he said that "We were affiliated with the unions in Canada.

Q. Did anything else occur there that you can recall now, that you participated in? A. There were a number of men that I saw there. I can name a few of them, and they were all very courteous and no one asked me to leave. Mr. West, he got up after I had been there fifteen minutes, and he said, "This is Mr. Arnold's son that you are talking to" and Mr. Clark said, "Well, I didn't know that" and I said, "Well, gentlemen, if that is the way you feel about it, I will leave" but no one asked me to leave.

Q. Was there any question about whether you could join the union and Clark thought that you couldn't join the union? A. I asked them could I be made an honorary member, and—

Q. And what did they say? A. They said, "No."

Mr. Lynch: You may cross examine.

Cross Examination.

By Mr. Blum:

Q. Mr. Arnold, you say you are an employee of the company? A. Yes, sir.

(606) Q. Working on a salary? A. Yes, sir.

Q. Do you have any regular hours for reporting to work? A. No, sir.

Q. You come in when you want to, and go when you want to? A. Yes, sir.

Q. You have free rein over the place, and go whereever you want to in the plant? A. That is right.

Q. Do you take any orders from anybody, as to what you should do? A. Outside of Mr. Arnold, that is all.

Q. Your father? A. Yes, sir.

Q. And what sort of orders would you get from your father? A. To take stuff down to the main office, every morning, or maybe go up on different roads to see how they were, or supervise fixing the road at the end of the line, or something like that.

Q. Would he give you those instructions every day? A. Once in a while he would.

Q. Once in a while, but most of the time you did

things that you thought were necessary to be done? A. (607) Yes.

Q. Of your own volition? A. Yes.

Q. Did you have anybody under your supervision whom you gave orders to while you were in the plant? A. Well, outside of Kaylor, probably to tell him when to go to the bank, or when to go to lunch, so that I could relieve him.

Q. Who relieves Mr. England when he is out? A. I was usually there, and stayed there, and looked around.

Q. Did you ever have to give Mr. England any instructions? A. No, sir.

Q. He is an officer of the company, isn't he? A. Yes, sir.

Q. All officers of the company have the right to go and come as they please? A. Why, I think that they are capable of taking care of themselves and doing their job.

Q. But did they have the right to go and come as they please? Could Mr. England have left at ten o'clock in the morning, if he wanted to? A. Yes. He knew what he had to do.

Q. Now, you said that you didn't get any dividends (608) from the company? A. No, sir.

Q. Nobody has ever gotten dividends from the company have *the*? A. No, sir.

Q. Your father testified the first day that the line was operating at a loss; is that true? A. That is right.

Q. Now, you say on the Saturday evening you were invited to attend this union meeting? A. Yes, sir.

Q. Where were you at the time you received this invitation? A. In our private office.

Q. Do these men have access to the private office? A. Sure, they come in there when they have a complaint to make, and they just happened to be in there that evening.

Q. They happened to be there? A. They happened to walk in.

Q. Were you already there? A. Yes, sir.

Q. And they walked in after you? A. I had probably been in there for maybe an hour or so.

Q. How long were they in there before they gave (609) you this invitation? A. I would say probably half an hour, or three quarters of an hour.

Q. What were they talking about for the half hour

or three quarters? A. That I don't remember, because we were all talking there together, and just talking about this and that.

Q. Who was there? A. Yes.

Q. Who was there? A. Yes, Mr. Frederick, and Mr. Birch, and Mr. Walton, and Mr. Stockley, and Mr. Clayborne, and a couple of them were there.

Q. Now, after they were there a half an hour, how long were they in there before they told you that they were having this meeting? A. About three-quarters of an hour.

Q. Up to that time, can't you recall any of the conversation at all? A. No, because we are liable to talk about anything, and buses, how the buses were running, or whether the new buses were running in comparison to the old buses.

Q. It was nothing unusual for the men to come into your office and talk to you about anything? A. No, sir.

(610) Q. It wasn't unusual for them to come in the office and to talk to anybody about anything? A. That is right.

Q. And that was true whether they were on their own time or on your time? A. They were off then.

Q. But it is not unusual for a man who is working there to come into your office and talking about something else, is it, besides work? A. Not to start a conversation, I wouldn't say, not to talk about something that wasn't pertaining to the business.

Q. You say that this was on a Saturday, and you were invited by which Mr. Frederick? A. Mr. Frederick.

Q. Were these other men here? A. Yes, sir.

Q. What were the words he used when he invited you to attend? A. He said, "We are going to have a meeting Monday night; come on over," and he went on to say that he was going to bring something—I don't know whether it was a piece of paper or a charter, or something, and they would put it in Mr. Arnold's lap, and hang it on the wall.

(611) Q. Which Mr. Arnold did he mean? A. Senior.

Q. Was your father invited to that meeting, too? A. No, sir.

Q. What did he mean "he was going to put the charter in Mr. Arnold's lap"? A. I didn't know whether

is was a charter or a piece of paper. I had never seen one of them before.

Q. What do you mean by " he said he was going to put that piece of paper in Mr. Arnold's lap? A. I don't know. I just don't know as much as you know about that, probably.

Q. You say you attended that meeting on Monday? A. Yes, sir.

Q. It was two days after the Saturday night where you had this conversation? A. Yes, sir.

Q. Now, on this Saturday night, when these men were in your office discussing this thing, did you offer them any refreshments of any kind? A. Refreshments?

Q. Yes. A. I didn't offer them any.

Q. Anything to drink? A. We had a couple of drinks but I didn't offer it to them.

(612) Q. Did they just go over and take it? A. Yes, sir.

Q. What were some of the drinks there?

Mr. LYNCH: Just a minute.

Mr. BLUM; I think this is very important.

Mr. LYNCH: Just keep your feet on the ground. I submit, may it please the Examiner, that if they had a couple of drinks together, unless he intends to show that he got these people drunk, to invite him, that is a different thing, but because they ha da couple of drinks together, that has no place in this record.

Mr. CARMODY: I can't tell now what it might show. I think that it is perfectly all right to go into what transpired at this meeting, which took place in the office of one of the officials of the company, on the property, at which meeting this official was invited to attend a meeting of the union. That has been denied here on the witness stand, that he was invited, and denied by the man whom he says invited him, and I think that it is proper to go into what transpired at the time he was invited.

Mr. LYNCH: May I have an exception?

Mr. CARMODY: It is noted.

(The previous question was read by the reporter.)

A. We always kept a quart in the safe.

Q. Did you ever have champagne in the office? A.
(613) No, sir.

Q. Did anybody else have champagne in the office? A. Not that I know of, no, sir. If they did, I don't remember it.

Q. Where was this whiskey when these men came in? A. Where was it?

Q. Yes. A. Sitting on the desk.

Q. And they just walked over and took a drink. A. Why should I make an objection? If it was cold, or anything like that, and the fellows were working on chains, I would say, "Come on in the office and get a drink."

Q. It wasn't cold around this time? A. No, sir; but they weren't invited in the office at the time they came in.

Q. They weren't invited? A. No, sir.

Q. Did you ask them to leave? A. No, sir.

Q. Whose whiskey was it? A. It was mine.

Q. Now, you say that there were five or six men there? A. Yes, sir.

Q. Every one of them walked over and took a drink? A. That is right.

(614) Q. Did some of them take more than one drink? A. I don't remember that.

Q. And all of the time they were doing that you made no objection whatsoever? A. I didn't see why I should make objection.

Q. Was it usual for you to permit the men to go to your liquor and take drinks?

Mr. LYNCH: I think that is objectionable.

Mr. CARMODY: Overruled.

Mr. LYNCH: Exception.

By Mr. BLUM:

Q. Will you answer that question? Was it usual for you to permit men to come into your office and take drinks? A. Yes, I have had them in a number of times to have a little drink after they were off their duty, or

something like that, or maybe the boy might say to me, "Have you got a drink?" and I would say, "Sure."

Q. Did you ever have as many as five or six at one time? A. Yes, sir.

Q. When was the last time that you had five or six men in the office at one time? A. During maybe a hard snow, or a hard day, with the men in the shop, or where they would work on putting on chains and some-
(615) thing like that, and it was cold, and the garage was well heated, and everything, but lots of times we had to leave the doors open to move the buses back and forth.

Q. And it was only during cold weather, prior to this time, that you had five or six men in the office that were drinking.

Now, on previous occasions, when these men came into your office and took drinks, did they take it themselves, or were they offered by you? A. I would put it up on the desk.

Q. When these men walked in on this night, did you take the liquor out of the safe and put it on the desk? A. It was already on the desk.

Q. I will ask that other question; on previous occasions when the men came in, and they were permitted to have drinks, were those drinks offered by you or did they take it by themselves? A. They usually asked for it.

Q. They asked for it? A. Yes, sir, that is right.

Q. You asked them to come in and have a drink because of the cold weather? A. I don't remember ever having asked a man to come in and have a drink, unless the weather was cold.

Q. And on all other occasions—

Now, on the occasions when it was cold, and the
(616) men came into the office, did you offer them the drink, or did they ask you for it? A. They asked me for a drink.

Q. What did you mean when you said before that on cold days—in cold weather, you invited the men in to the office for drinks? A. If a man was off duty, and it was cold, and everything, I would say, "Come in and have a drink."

Q. You would invite them to come in? A. Yes.

Q. That is right.

Now, was this, then, the first occasion when the men

walked in themselves and took a drink? A. No, sir.

Q. When was a prior occasion that they walked in and took a drink themselves without asking you, in your presence? A. In my presence?

Q. Yes. A. Why, it might have been a week or a month ago, and I never kept track of the date or when they came in and asked for a drink.

Q. And you didn't have any champagne there at that night at all? A. I didn't see any.

Q. Did you drink any champagne there in your of-
(617) fice A. Did I?

Q. Yes. A. No, sir, it is a little bit too rich for me.

Q. Did you drink with the men there? A. I drank whiskey but not champagne.

Q. You drank whiskey? A. Yes, sir.

Q. You say this meeting was on a Monday? A. As far as I know, yes, sir, it was on a Monday.

Q. And that was March 1, wasn't it? A. Yes, sir.

Q. Did you hear the testimony and see the minutes which said that the meeting was held on March 3rd, which was a Wednesday? A. Did I?

Q. Yes. A. I don't know anything about the minutes.

Q. Were you here the other day when the minutes of the meeting were put in evidence? A. No, sir.

Q. If we show you the minutes and the minutes are dated March 3rd, would you say you were mistaken and it was was held on a Wednesday? A. Why, sure I would.

Q. Now, was it usual for you to go around dressed
(618) up in a driver's cap? A. I put on a driver's cap a number of times. Maybe just kidding around the office, or something.

Q. When you left the office on the date that this meeting was held, what time did you leave the office? A. About 12:30 or a quarter to one.

Q. Was it usual for you to be in the office at that time of night? A. Lots of times I have been there.

Q. Well, how often have you been in the office at that hour in the last six months, if you can tell me? A. In the last six months?

Q. Yes. A. I would usually stop back on the way home from where I had been in the night time and see how everything was and maybe go back in the office and

wash my hands or something like that, or look around the shop and see how *thing* were.

Q. When the men invited you to the meeting on Saturday night, did they tell you where the meeting was going to be? A. Yes, sir.

Q. Did they tell you what time it was going to be held? A. No, sir.

Q. How did you know to come back to the office at
(619) 12:30 to go to the meeting? A. Because the night of the meeting we were standing in the boys' room, and I was in the boys' room standing there and two or three of them were on their way over to Mr. Frederick's house, and they said, "Joe, come on over," and I said, "I might be over after a while."

Q. That was a second invitation? A. That was a second invitation.

Q. You didn't act on the first invitation at all, did you?

Mr. LYNCH: The meeting wasn't held yet.

Mr. BLUM: You didn't know when the meeting was going to be held on the first invitation?

The WITNESS: They said that night.

By Mr. BLUM:

Q. When you got the first invitation? A. Yes; and it had to be held after the boys were off work.

Q. The boys usually had been loyal and wouldn't take your time to do things like that? A. Say that question over.

Q. The boys were usually loyal and wouldn't take your time to do things like that? A. Won't take your time?

(620) Q. Yes. A. I don't know what they were doing.

Mr. LYNCH: Mr. Examiner, I object to that question.

Mr. CARMODY: That is hypothetical. The objection is sustained on that.

By Mr. BLUM:

Q. On the evening of the meeting, you say that some boys were there getting ready to go to the meeting, and they said, "Joe, come along." Who were those boys?

Mr. LYNCH: Did he say that there were three boys, or did he say some of the boys?

Mr. BLUM: He said three.

The WITNESS: I know that they were around there turning in, and that they were heading over to Frederick's house, and on the way out of the office, they said, "Joe, you better come on over" and one of the boys was Bob Baxter.

Q. One of them was Bob Baxter? A. He is the night cashier.

Q. Did he go to the meeting that night? A. No, sir.

Q. And who were the other two? A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Where did you meet these two men that you (621) said you went over to the meeting with? A. Out front.

Q. How did you happen to go with them? Did they say anything to you when you saw them? A. I said, "I am going to the meeting" and they said, "We are going, too."

Q. And you took them over in your car? A. That is right.

Q. Who were those two men? A. Hancock and Van Sise.

Q. Both of these men are still in your employ? A. Yes, sir.

Q. This man Baxter is still in your employ? A. Yes, sir.

Q. Now, when you came to the office just before you went to the meeting, were you wearing that driver's cap? A. No, sir.

Q. Where did you get that driver's cap? A. Out of the office, the first thing I put my hand on; and I couldn't find my own hat so I just put it on my head, and I think it was raining that night; I am not quite sure, but I am almost positive that it was.

Q. And when you went to the meeting everybody knew who you were? A. Yes.

(622) Q. And shook hands with you? A. That is right.

Q. Now, during the course of the meeting, did you have anything to say? A. Did I have anything to say?

Q. Yes, at the meeting. A. I just asked Mr. Clark where he was from, and he said he was from Boston. Then he went on to tell the boys different things, and to tell you the truth I didn't pay much attention to what was going on.

Q. Why did you go to the meeting? A. Because the boys invited me, and I thought probably that it might be something worth while hearing.

Q. Worth while in what respect? A. I thought maybe it might be telling some good jokes or something, and I might get in on them.

Q. At a meeting? A. Yes, sir.

Q. You like good jokes, don't you? A. Yes, sir.

Q. How long were you there before Mr. West said, "That is Mr. Arnold's son you are talking to"? A. I have answered that.

(623) Q. How long were you there? A. Fifteen minutes.

Q. And Mr. Clark said he didn't know that? A. Mr. Clark stood up and said, "Well, I didn't know that."

Q. Was that your only activity there, just to ask Mr. Clark where he was from? A. Yes, sir.

Q. When you got there, was a serious meeting going on? A. Not that I know of.

Q. Was there a meeting of any kind going on? A. They were all bunched around like they were talking to each other, but I didn't see anything serious about it.

Q. Did you hear any jokes there? A. No, I didn't.

Q. And when you noticed that it wasn't going to be the type of meeting where jokes were going to be told, why did you remain? A. I didn't stay but fifteen minutes.

Q. I thought you said it was fifteen minutes before Mr. Clark said he didn't know that you were Mr. Arnold's son? A. I was introduced as Mr. Arnold, and when I came in—and I don't see why he would feel that way about it.

(624) Q. But he did make that remark? A. I think he did.

Q. And that was fifteen minutes after you were there, and after that, the charter was put in your lap, wasn't it? A. Yes, sir.

Q. So you must have been there some time after that? A. Not after that, no. During the 15 minutes, the charter was put in my lap.

Q. And was it put into your lap? A. Yes, sir.

Q. Did you ask to see it? A. No, sir.

Q. Do you know any of the men whose names were on there? A. Yes.

Q. I thought you testified on direct examination that you did testify that they were on there? A. I read that at the meeting.

Mr. LYNCH: I think that there is a difference as to scrutinizing the men on the charter, or whether you knew the men at the meeting.

Mr. BLUM: I withdraw the question.

By Mr. BLUM:

Q. Did you recognize the men at the meeting? A. Yes, sir.

(625) Q. How many men were there? A. I would judge around twenty, or twenty-two or twenty-three, or twenty-four.

Q. How many of those twenty or twenty-two or twenty-four men were the men that were discharged? A. I would rather answer the question the other way, if I could; of the men that are still working for us.

Q. I want you to answer that; of the men that were there at the meeting?

Mr. LYNCH: The question—see if I am right on that. The men who were there at the meeting, and everybody discharged.

Mr. BLUM: I wanted to know how many of the men that were there at the meeting were discharged, just a figure.

Mr. LYNCH: You can answer that.

The WITNESS: I couldn't very well answer that, because I wasn't paying much attention. I knew quite a number of the names of the men that were there, but I couldn't name all of them.

By Mr. BLUM:

Q. Were any of these men that were here, were they discharged? A. Some of them.

Q. Just some of them? A. That is all I can remember, some of them. I know that Mr. Kaddel—do you (626) want me to name some of them?

Q. Yes, go ahead. A. Mr. Kaddel, and Mr. Birch, and Mr. Harris, and Joe Harmon was there, and Magaha, and Billy West, and Guy Samples, and Philpott, and Van Sise, and Hancock.

Q. And some of those men that you have mentioned here have been discharged? A. Yes, sir.

Q. This meeting was held on March 3, is that true? A. Thought it was on March 1, but it might have been on March 3rd.

Q. And if March 3rd is the true date, some of the men were discharged the next day, and the day after that, is that true? A. I don't remember that. I never made a test of it.

Mr. BLUM: I think that is all.

RE-DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Some of the men that were there are still employed? A. Yes, sir.

Q. By the way, these fellows call you Joe, and you call them by their first names? A. Yes.

Q. And you are about the same age as many of them? A. That is right.

(627) Q. And you more or less fraternize with them? A. Yes, sir.

Mr. LYNCH: That is all.

Mr. EXAMINER: Is your witness here?

Mr. CARMODY: Will you take the stand, Dr. Leiser-

Whereupon WILLIAM M. LEISERSON was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. CARMODY:

Q. Give your name to the reporter. A. William M. Leiserson.

Mr. CARMODY: May I ask a question here?

I don't know how best to introduce this evidence. I want to ask the advice of counsel.

It has been suggested that Dr. Leiserson be asked whether or not this is the evidence that he gave in this hearing, and whether or not he still believes it is true; I mean, if that is agreeable to you, you can get through with the witness in a short time. However, if that isn't satisfactory, then the questions can be asked, and he is subject to cross examination, of course.

I will be guided by what counsel wishes to have done.

(628) Mr. HUGHES: Your Honor, we object, of course, to Dr. Leiserson's prospective testimony, and we have read over the testimony in the Greyhound case, and assuming *is* testimony will be now as it was then, we object on the general ground that it is incompetent, and irrelevant and immaterial, and on the further ground that the Greyhound case was quite a different case from the present case. The issues were different, and the only issue in the present case is the issue of whether the company is guilty of having discharged these men because they are union men, and it doesn't seem to us that the general background of labor difficulties over a century has any bearing on that.

It seems to me that that question has already been passed on by the courts. If, however, the Board wants his testimony as it is in the Greyhound case, we are willing to concede that he would now testify as he did then, and we would like to cross examine him on that.

Of course, his testimony would be over our general objection.

Mr. BLUM: Is it stipulated, then, that Mr. Leiserson's direct examination as it appears in the transcript of the record of the case of the National Labor Relations Board, petitioner, vs. the Greyhound Lines, Inc., and Greyhound Management Company, respondents, pending in the United States Circuit Court of Appeals for (629) the Third Circuit, would be exactly the same as it appears in the record of that case?

Mr. CARMODY: Subject to the objection.

Mr. BLUM: They are requesting the right of cross examination.

Mr. CARMODY: The objection is overruled, and an exception is noted, and subject then to cross examination.

The WITNESS: I want to make one correction in this: I would testify exactly the same way to these questions as they were asked me, but my middle name is "M" and not "S" as it appears in the record.

Mr. BLUM: That correction will be made.

You can go ahead with your cross examination.

CROSS EXAMINATION.

By Mr. HUGHES:

Q. I have read over your testimony in the Greyhound case and I am particularly interested in that part of it wherein you describe the growth of the legal recognition of the right to organize.

Mr. CARMODY: On what page are you, Mr. Hughes?

Mr. HUGHES: I don't know exactly what page it is, but it seems to run all through it.

Let us take that reference over here to Justice Shaw's decision?

That is page 325.

Now, you show that that right to organize has grown (630) up, or at least, the legal recognition of the right has increased over a period of years, until now it is generally recognized that men have a right to organize, and that is so.

And the right is now protected by the law, is it not?

A. It was by Section 7 A, and now by the National Labor Relations Act.

Q. The right, however, is subject as to its use, to the other rights, is it not? A. Yes.

Q. The rights of employees, and employers? A. Of course, I should make the one explanation. The courts have ruled while men have a right to organize, their organizations cannot do illegal things, but when they do illegal things the courts do not dissolve the organizations; they punish the illegal things, or enjoin them.

Q. In other words— A. If in the course of a strike,

for instance, there were violence, or calling bad names, or disorderly conduct, they would—an equity court might enjoin that, or the police might take them in for that, and it wouldn't have anything to do with the legality of the organization as such, if its general purposes were collective bargaining, which is, of course, legal.

Q. Now, the actual process of organization is always subject, of course, to the rights of the others, is it not? (631) A. I presume everybody's right is subject to the rights of others, and there are no exclusive rights, whether it is property rights or any other.

Q. So that during the course of organizing a labor union, the rights of the employer, and the rights of other employees, and the rights of the public must be recognized, isn't that so? A. Of course.

Q. Surely, now, the employer, he too has rights, has he not? A. Absolutely.

Q. With respect to the labor union, and— A. Wait a minute, now. When you say "rights with respect to the labor union," he has no business with the labor union, and the labor union is a matter of the employees and he has no more rights with the labor union than he has, for example, with an association of people who sell him things.

Q. That is right. He has, of course, the right to hire and fire his employees, has he not? A. Yes, for his own purposes. The management of the business, yes. He has a right to hire and fire; but he hasn't any right to interfere with the organization of employees, and to pretend that he is exercising a right to hire and fire (632) when he is interfering with the organization, just as you said.

Q. That is what is prohibited by the Act? A. That is right.

Q. And in the hiring and firing of employees, just as he need give no excuse for hiring a man, so, in so far as the legal right of the employee is concerned, he need give no excuse for firing? A. It depends upon whom—

Q. In this particular industry? A. It depends upon whom you are talking about, that is entitled to the excuse. Of course, when the employer exercises his right to hire and fire, he doesn't have to excuse himself to anybody, but when he is charged with violating the law, then he has to excuse himself either to the court or to the administrative or quasi-judicial body established by

law, where he has to show that he didn't interfere with the other, when that charge is made on the basis of the evidence.

Q. Now, you don't mean to say, do you, that the burden is upon him when he is so charged? A. I am not a lawyer enough to know where the burden of proof would *like,* but all I can tell you in answer to your question is that the Supreme Court in the Texas and New Orleans Railroad, which case arose under the Railway Labor Act—

(633) Q. I am familiar with that case. A. —— the carrier contended that he had a right to fire.

Q. Right. A. Just as you said, that isn't the question here. The question is, you are charged with interfering with the rights of the employees, and since you have no constitutional right to interfere with them, you have no complaint in that case.

Q. In that case, in addition to the charge such as in the present case, there was the charge of attempting to destroy the union already organized, and likewise the charge of attempting to organize a company union in opposition and there were other charges of unfair labor practices. A. Whenever people are discharged for belonging to a union, the purpose is to destroy the union, and that is the reason people say that they don't want to be discharged for union membership. If an employer discharges the chairman of a committee who comes to see him, or the president of the union, or an officer, obviously the purpose is to scare everybody so that there will be no organization.

Q. Now, assume that to be so, would you say that where the total number of employees is eighty, of which, let us say, sixty are members of a union, and twenty are discharged, would you say that the mere fact of the dis-

(634) charge of the twenty alone and of itself, was for the purpose of destroying the union, where 40 of the union were retained? A. I couldn't answer to that state of facts. In my experience, all you need to do is fire one. If you fire the leader of a union, and keep all of the others, that will destroy the union, because it will show the others what needs to be done, and what will happen to them. That has happened again and again in these labor relations cases.

Q. Assume that the leader is not the only one fired, and that others who are not prominent and not ringlead-

ers in any way, and not officers, and not organizers, and numbers of them are also apparently indiscriminately fired, would you say that any presumption arose from that on the basis of your experience in these cases, that they were fired? A. I can't answer on the presumption. You see, when you say that they were indiscriminately fired, you are assuming that the evidence that has been heard and a finding of fact has been made that they were just indiscriminately fired for other reasons. That answers itself. The question is when people are fired, whether it is one or twenty or two. You have to look into it, whether the purpose of firing was to destroy the organization or whether the purpose—or to discriminate against them, or whether that wasn't the purpose at all, whether the purpose was something else, and I assume (635) that that is what these proceedings are about.

Q. In attempting to discover what the purpose was in firing any given number of men, such as twenty, in the present case, does the fact that a given man is fired without any explanation, plus the further fact that he is a union man, on the basis of your experience in these cases, give rights to any presumption that he has been fired because he is a union man? A. Well, let me see—

Q. If it is, I mean. A. Let me cite an answer in the actual way that such a case arose, in my own experience. I have acted as arbitrator in the clothing industry a good deal, as this record will show. After a strike in the clothing industry of Chicago, an agreement was made, and the strike was settled on the basis of the agreement, that all of the men would be taken back without discrimination, and thereafter there would be no discrimination against union people. Now, for the purpose of your question, that is all of the agreement that I need to cite. A board was set up with one representative of the employer, and one representative of the employees, and I can tell you the names of the representatives; Levy-Meyer, counsel for the clothing manufacturers, and also for the packing companies there in Chicago, and a well-(636) known lawyer, represented them, and Clarence Darrow represented the employees. Now, when that case came to them, there was no arbitrator as yet, and no referee, and they handled it first, and these two outstanding lawyers representing the parties alone had to handle the case, where one man, or perhaps two, I don't recall the number, were discharged. The employers con-

tended that they were discharged for some other reason, and we don't have to give any reason, and the employees contended that they were discharged for their activity in the union, and mind you, this employer was actually dealing with the union, under an agreement, and it wasn't a question of the union trying to establish itself, and this board of two leading lawyers, without the aid of an arbitrator or referee, ruled that this agreement which said only that there should be no discrimination against union men, required the employer, when the *employ* was discharged, to establish his real reason for discharging the man, and he couldn't just say, "I didn't discharge him for union activity." Now, I know that, because later when I was the arbitrator I had to follow that decision, and it was a precedent binding on me.

Q. Would you say, then, that the present Act as construed and applied, requires an employer, when he fires a union man, to show that he does not fire him be-
(637) cause of his union activities? A. I wouldn't undertake to construe this Act. I think that you will have to let that go.

Q. From your experience in connection with your own mediation board? A. I can't answer your question with respect to construction of the Act. But I can say this: As an experienced man in labor relations, who sits on a Board, although we don't have authority to make decisions, we merely mediate, but who has sat on Boards where we made decisions, as arbitrators, the established good practice in labor relations, that most arbitrators who are experienced will agree to, that when there is a requirement that there shall be no discrimination for union activities, if the employes charged union activity—and gave some kind of a *prima facie* case for it, then it is up to the employer to show what he did discharge them for, and I would say that is good and established practice in labor relations.

Q. That is what I am getting to; what I am getting to is this: I am wondering how an employer in whose plant there has developed a union, and a union is apparently being started, and it happens that at that time he is about to fire some union men, not all of the union men, but some union men, and I am wondering how he can protect himself, against the charge that he has fired
(638) these men because they are union men? How

would we go about it? A. I can answer that. There are two ways.

Q. Bear this in mind, if I may conclude the question, of the employer is later charged with having fired these men because they are union men, he is faced with the difficulty of proving a negative fact, proving a negative; and I am wondering how the practice has been—and this, of course, is a new Act, and this employer is faced with a new situation, and how does he protect himself? A. He needs no protection if he has a good management policy with respect to discharges, that is considered established good practice. For example, no well managed plant discharges people without a warning, and without talking it over with the man, and if they are discharging for incompetency, let us say, he will have a record of the man's work, and he won't just put a slip in his pay envelope as they used to do in the old days, "You are discharged" and the man will be called in, and it will be talked over, and here is the thing with which we are dissatisfied, and here is your record before, and in the larger concern, even, they won't permit a foreman to discharge a man, a man who has direct control over them, but the foreman will talk to him, and say, "We are dissatisfied with your work for this reason, or that reason, and I am sending you in to the personnel department, the employment department"; and that em-
(639) ployment man goes over the whole thing to find out whether the foreman was right or wrong, and very often it happens, and because it happened too often, this personnel department has been set up, that controls that. Now, if these employees are to be discharged, and the firm is well managed, in accordance with current practice, these employees would know beforehand what their faults were, and it would have been talked over with them, and there would not be any question as to why they were discharged. On the other hand, the second answer to your question is this: There wouldn't have been any doubts in their mind if when a union was being organized, the employer had expressed dissatisfaction, or had spies in their meetings, or had in some other ways indicated his displeasure, and then without this record of why the man was discharged or given two weeks' notice which was good practice, then the thing would be clear, but if the employer on the one hand expressed his displeasure and put in spies, or other people to put into

the union people's meetings, and on the other hand doesn't show the record to the individual man, whatever may be the rights under the law with respect to any excuses, everybody agrees that a man who has worked any amount of time, who isn't just hired temporarily for a week or two, is entitled to an explanation when he is discharged.

Q. Now, let me ask you further: Of course, in try-
(640) ing to find out, I realize it is a difficult question at times, whether a union man or a series of union men are fired because of their being union men; would you take into consideration the fact that other union men were not fired, and were retained? A. That may or may not be important in the case. It depends upon the facts in the case.

Q. And your experience has been that in small unions such as this union here, there are only 59 members, for instance, of the union concerned in this present case, there are only two or three officers, as a rule, are there not? A. Yes, there would only be a few.

Mr. CARMODY: You are talking about a local. What is the name of the union that is involved here?

Mr. HUGHES: I am speaking about the local.

Mr. BLUM: It is Local 11079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America.

Mr. CARMODY: Then this local has a charter from the international union?

Mr. BLUM: Yes.

Mr. CARMODY: The facts of which I am not familiar with. Just get this particular part of the record straight; is this a large union or a small union?

Mr. BLUM: The international, as I understand it, is very large.

(641) Mr. LYNCH: I don't think that we could have it in the record that way.

Mr. CARMODY: May I ask counsel for the union, whether he knows the size of the union?

Mr. REYMAN: It is composed of some 200,000 members, members of locals.

Mr. CARMODY: Go ahead.

The WITNESS: I didn't get your question about a small union of 59 members, say, of course, they would have only a small number of officers. That is obvious.

By Mr. HUGHES:

Q. They wouldn't have twenty officers out of 59 members? A. No.

Q. Now, from your experience, Professor, let me ask you at what stage it is in the formation of a union, in a shop where theretofore there has been no union, it is either necessary or customary for the management to recognize it?

Isn't it as a rule subsequent to a formal demand for recognition; but I am trying to get the modus operandi of getting the facts to the management; do they send a copy of the charter? A. I can give you that: First, let us begin with—here you have got an organization, say, of 59 people, and of course if the employer were really (642) following the law, he wouldn't know how many members they had, and which were members or which were not, until they told him. He would have no source of information.

Q. Except accidentally. A. Except as they told him, because he was supposed to keep his nose out of it.

Now, when people begin to organize, what they usually do is try to sign up members, and they go to each other's homes, or they talk at lunch periods and so on, and if they find that they have a substantial number, or a majority, they will then organize, and they may either call on a national organization, as here, the Amalgamated Street Railway men, to give them a charter as a local, or they may just set themselves up as a local union of their own. They will elect officers and some kind of a committee, and then they will talk about what they want to present to the employer, and then they will send a committee to go to the employer to say, "We have organized ourselves, and we want this or that".

Now, when it comes to getting that committee, if the employer has indicated his displeasure, he doesn't want a union, or has given them evidence that he wouldn't like to have a union there, then the members will be afraid to serve on the committee, and they will have a good deal of trouble in getting a committee, because those (643) are the men, whether they are officers or just employees, those are the men that stand out at the forefront, and where there are illegal discharges, it is the fellows from the committee, or those who are otherwise active, that are discharged.

Now, after they present their demands to the employer, sometimes the employer fires the whole committee and tells them so openly, and sometimes he doesn't tell them, and he says, "I will consider your demands" and then a little bit later he discovers that he has a good many inefficient employees, and discharges some of them.

Sometimes he just negotiates with them and says, "How many members do you represent here?" and they will say, "Well, we have a majority", and he will say, "How do I know that you have the majority?" and under the law they will say, "Well, we can have that settled by the Board. That is the way it happens on the railroad, and we will just apply to the National Mediation Board to run an election or check our authorizations, as we call them, *gainst* the signatures on your pay roll, and then this Board will certify that we represent them".

That is the way the employer gets his knowledge, that the officials or the committee that comes to him are the duly designated authorized representatives of the employees.

Mr. HUGHES: That is all.

Mr. BLUM: One question, Doctor.

(644) RE-DIRECT EXAMINATION.

By Mr. BLUM:

Q. Assuming that the entire night crew, all union men, with the exception of two who are not dismissed, are dismissed within a few days after the employer knows that a union is existing in his plant, would in your experience that indicate an attempt to destroy the union?

Mr. LYNCH: We object to that, may it please the Examiner, on the theory that it doesn't state all of the facts at all here, not only that, but he has to give a description of the company. The Doctor has been talking about personnel officers, and if he knows he is dealing with a small company that has been going in debt for nine consecutive years, and has two people in their office, I think it is an entirely different situation.

Mr. CARMODY: I don't think it is any different than —I don't think there is any difference between that question and the hypothetical questions that have been asked on cross examination.

Mr. LYNCH: May we have an exception?

Mr. CARMODY: The Doctor may answer if he knows, to the extent that he knows, and he may not answer.

The WITNESS: I don't want to answer that question, because if I answered the question, I would be making the decision for your Board, and I don't want to answer that.

(645) Mr. BLUM: I will withdraw the question. That is all—I have one other question—but never mind—That is all.

Mr. LYNCH: I have one other question:

RE-CROSS EXAMINATION.

By Mr. LYNCH:

Q. Doctor, have you ever been the general manager of a plant or the owner of a plant? A. I haven't been the general manager of a plant, but I have had a great deal to do with management problems at plants, and, you see, general managers of plants get in trouble with their employees with respect to their management, and then they have to call people in, and I have often been called in for the purpose of helping them fix things up; that is, in their management, so that they won't have trouble.

Now, further than that, I have often been called and paid by firms, small and large, for advising them how

to rearrange, as a consulting expert, their management policies with respect to handling personnel.

Q. Have you ever been called in by the labor organizations to help straighten them out when they have done the wrong thing? A. Well, I have done some work in that direction as well.

Q. They make mistakes too, then, do they? A. Many of them.

(646) Mr. BLUM: May I ask for a slight recess?

(Whereupon there was a recess for ten minutes, at the conclusion of which the following occurred.)

Whereupon CHAMP C. JOY was called as a witness on behalf of the respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. Joy, give your full name? A. Champ C. Joy.

Q. And Mr. Joy, your residence is where? A. 512 North Kenmore Street.

Q. Arlington County, Virginia? A. Yes.

Q. And have you had occasion during the last year to ride the buses operated by the Washington, Virginia and Maryland Coach Company? A. I do, fairly regularly, every day except Sunday, and sometimes then.

Q. Do you know a driver by the name of Crissman? A. I do.

Q. Have you had occasion to call the attention of the managers of the company to his conduct? A. I have.

(647) The only time in my life I ever reported a public service servant was the case of that individual.

Q. When was that? A. In the early part of the fall of the past year, last fall.

Q. And who did you make that report to? A. I went to the office down on Wilson Boulevard, of the Arnold Garage, and made it right at the office in the presence of Mr. Arnold and Mr. England.

Q. What was that complaint? A. It was as to his conduct as a driver, and his attitude toward me as a passenger, as well as several other passengers, and in-

cidents which I had observed in his conduct, and on that particular occasion I had occasion to get on the bus terminal and paid my fare, and found it necessary to get off again, having forgotten a pair of shoes that I had in a repair shop, and I asked the driver if there was any way that I could get a transfer and catch the next bus out, and so the transfer was issued to me, and I came back probably 15 minutes later, and it happened to be Mr. Crissman's bus, and I got on it, and I waited until everybody got on, and I leaned over and told him that I had gotten on the bus and paid my fare, and that the *employ* had issued a transfer and told me to catch the next bus, and I had to get off and he said, "I can't take (648) the transfer", and I said, "What do you want me to do, pay my fare again, and I have got evidence here that shows that I paid it, or I wouldn't have that transfer" and it seemed to me that an employee would not question a patron of the bus company that he knew, and had seen me time and time again on his bus, and I had ridden with him many times.

"Well," he said, "I can't take the transfer," out big and loud before everybody, and I was more or less embarrassed, and I said, "All right, if you want me to pay my fare again, I will do it", and I reached in my pocket, and dropped in a dime, and I got my transfer back, and I stuck it in my pocket, and I had no intention of reporting him at all, and so I went back and took my seat, and I got out on my street and in the meantime I was beginning, as a citizen to feel burned up about it, and I said to myself, "I have seen enough out of this driver that I am a little reluctant to report him to the company, but I do think that Mr. Arnold ought to know about such conduct, on the part of any of his employees, and I wouldn't like to see other people riding a bus treated as I had been on two or three previous occasions, and I said, "Now, I have got to be down at the bus terminal tomorrow evening", and I had business with Mr. Jones, the real estate man, right across from the garage, and I said "It isn't going to be any inconvenience to me to stop there, or very little, to stop and report this inci- (649) dent, so I think I will just do it", and when I got off the bus, I asked him what his name was, and he said, "Mr. Crissman" and I thanked him and got off the bus, and the next evening I proceeded down to get off the bus there at the garage and I reported the in-

cident and I told them at the time that the employe had been very discourteous on numerous occasions and I didn't think it was helping the bus company's good will at all to have a man like that in their employ, and I said, "I don't want you to fire the man, but I wouldn't want him working for me.

Q. Mr. Joy, have you ever observed, in recent months, the last two or three months, as to the cleanliness of the buses? A. I have. I have taken the trouble to report it down here at the down-town terminal to Mr. England, and while I have never had occasion to be around the garage, or the office of the company, I never made an official report to Mr. England; I thought that was sufficient—yes, I have gotten on the bus several times and had my clothes dirtied up, sitting in a dusty seat, and saw other people that had to put newspapers in the seat in order to keep from getting their light-colored clothes all soiled, and I saw them get up with their clothes soiled.

Mr. LYNCH: You can cross-examine.

Mr. BLUM: Yes.

(650) CROSS EXAMINATION.

By Mr. BLUM:

Q. Now, Mr. Joy, do you know Mr. Arnold personally? A. I do.

Q. How long have you known him? A. I would say seven or eight years, just by seeing him and having him pointed out to me, and I have talked to him once or twice, or made a report to him down in front of the terminal in the evening.

I have ridden on the coaches when he and his wife were on the bus, but I never talked to him intimately.

Q. Was that a social occasion when he was on the bus with you? A. It was not.

Q. No? A. We just happened to be going to the same place, and he and his family happened to be on the bus.

Q. Do you know Mr. England personally? A. Not any more than you become acquainted with anybody in the public service of that kind. I saw him around the bus terminal for years before I knew who he was or

that he represented the company in any official capacity.

Q. When was the first time that you had occasion to observe Mr. Crissman's conduct? A. Well, I doubt very much if I could answer that, not knowing his name, but (651) having observed his face, and finally became familiar with his face so that I could recognize him from among other drivers, and probably a year or two I had known his face before this incident.

Q. Now, where did you say you lived? A. 512 North Kenmore.

Q. In Arlington? A. In Clarendon, Arlington County.

Q. How often do you have occasion to use the Arnold buses? A. Well, I usually come to work in the morning on it, and go home in the evening, and sometimes come back down at night.

Q. In the District? A. Yes.

Q. Is that the only means of transportation that you have? A. No, it isn't.

Q. Is there any other bus company? A. The Washington-Fairfax Gray Line Bus.

Q. Is there any difference in the fares? A. No difference whatever.

Q. Is the equipment on the other line just as good or better than the equipment on the Arnold Line?

Mr. LYNCH: That is irrelevant.

(652) Mr. BLUM: I have a purpose in that; if it is not proper you can strike it out.

Mr. CARMODY: He may answer.

Mr. LYNCH: Exception.

The WITNESS: I would say that it is hard to answer that question, because most of the equipment on the other line is relatively new, having only been in existence a couple of years, and most of the buses are in fairly good shape, whereas some of Mr. Arnold's buses are even newer than the Gray Line or as new, and I would say were the better grade buses, the services are practically the same.

Q. Now, are their time schedules nearly the same? A. Well, I am not familiar with the Gray Line schedule. I only catch it, as I have to, more or less, when I have missed my regular bus on the Arnold Line, and I walk through the park and catch a Gray Line.

Q. The Arnold Line is more or less of a habit with you? A. Yes. I ride it, I would say, more than I do the other line.

Q. When you noticed the conduct of these bus drivers, and the buses being so dirty, and the attitude of these employees, did you stop riding on the Arnold bus and take the other bus line? A. No, I didn't, because it was too inconvenient.

Q. Doesn't the other line run near your home? A. (653) No, sir, it doesn't.

Q. How much out of the way would it be for you to take those? A. About seven blocks.

Q. Was the inconveninece on the Arnold bus, and the dirt and discourtesy of the drivers, so great that it would stop you from taking this seven-block walk? A. Well, as I told Mr. England on two or three occasions I have made a solemn oath to myself a time or two that I wasn't going to ride it any more, and in nice weather I very often walk through the park and catch the Gray Line, and I did it a couple of mornings ago, and since they got better buses on the line, and when warm weather comes, and the windows can be opened, and the dust doesn't fog so much in the bus, I don't mind it so much. In the winter time, it has been terrible.

Q. On the Arnold buses, when you were riding in it, did you notice that dust more in the summer or in the winter? A. More, in the winter, because the windows are closed. They haven't had the windows opened much this spring, but I imagine it will be better later on.

Q. I understood you to say, for the first time in your life you ought to report an incident of discourtesy of a driver. A. Yes, I had been provoked a number of (654) times, but never to the extent like I was in this case.

Q. You have often been provoked by public servants? A. Several times, such as street car conductors, and I have had them refuse to take a transfer.

Q. That made you very angry, and you had words with those conductors? A. I never argued with them,

and I didn't argue with Mr. Crissman, and in fact Mr. England offered a refund and I wouldn't take it.

Q. When did he offer to refund it? A. At the time I made the complaint, and he offered it to me, and he said, "Mr. Joy, I will give you your dime back, and you shouldn't have had to pay your fare.

Q. He said you shouldn't have had to pay it? A. Yes.

Q. When he refused to accept the transfer, did he say he was carrying out the rules of the company? A. He didn't even apologize for his action. If he had told me that he was "very sorry, but I can't take that transfer, you realize the position I am in" or if he had said, "I will have to make it good myself out of my own pocket" I certainly wouldn't ask a driver of a bus or a street car conductor to do a thing like that. I have argued with street car conductors and had them tell me, "if you don't pay it, I will have to pay it".

(655) Q. And for that reason you would pay it? A. Yes, because I didn't feel it was fair.

Q. And on those occasions you would report the men? A. No, sir.

Q. Because you couldn't see them take it out of their own pocket? A. *I* wasn't so material to me.

Q. You said that you had been provoked by this incident of refusing to accept a transfer, and similar other incidents of discourtesy? A. There had been incidents prior.

Q. What were some of the others? A. One evening I got on the bus, and I came up, and I think it was the hour that I went out in the evening, and the Columbia Pike bus, which I ride, which is my usual bus, didn't at that time come all of the way down, but stopped in Georgetown, and I had been in the habit of coming up to the 12th Street terminal, to get on a Cherrydale bus, and get a transfer and get off at Georgetown and catch my Columbia Pike bus, which was there waiting, and on this particular evening I had come up a little earlier than usual and during the rush hours in the evening they had a habit of running a Columbia Pike bus all of the way down town, and I was not accustomed to riding that particular bus, and I didn't have a transfer, and so when I (656) got up to the terminal I saw the Clarendon bus waiting, and I jumped on it and dropped the dime in the box and asked for a transfer.

Q. Who was the driver? A. Mr. Crissman; and he said, "I can't give you a transfer" and he knew the trip I took, and I said, "I want to go out to Columbia Pike bus", and he said, "That bus is right behind me", and I said, "I am sorry, I didn't know it, and I have been in the habit of catching the Georgetown", and so I stood there, and he said no more about it, and I said, "What are you going to do about it?" and he said, "You have got your fare in the box now", and I said, "Can't you give me a transfer to Georgetown so I can change as I have been doing in the past?" and he said, "I am not allowed to give you a transfer" and we argued all of the way up to New York Avenue, at 12th Street, and in the meantime he pulled up, and I stuck with the bus so when he got to New York Avenue he waited until the bus behind me had pulled out, which left probably within a few seconds after his bus did, and probably a block behind us, and he sat there waiting, and I didn't know what was coming off, and nobody on the bus knew, and the driver pulled up alongside of him and stuck his hand out and he hollered out across, "Hold your bus. I have got a passenger for you", and he made me go out before two bus-loads of people, and I felt like a fool, and there was no occasion for me to change at that point. I didn't (657) even report that incident, and I said nothing about it, and I passed it up as one of those things and said, "Well, I won't do anything about it, and then the transfer incident came up a short time after that, and I said, "That is enough".

Q. And the fact that the man put you on the proper bus that would take you home at a point other than a transfer point so incensed you at his conduct that you thought that along with the other thing made him in a position where you ought to report him? A. There were other incidents.

Q. He wanted to know these other incidents? A. One evening, probably in between these two incidents of the transfer—and the transfer at New York Avenue—I was on his bus going out one evening, and when we got by the dairy up in Georgetown, by the Chevy Chase Dairy, as you go down beyond Washington Circle, and it was raining, and a man and a lady was on the corner down just before you cross Rock Creek Bridge, and we waved for the bus, and Mr. Crissman pulled in to the curb, and the lady got on the bus, and put her fare in the box,

and the man was fixing to step up, and he had a small dog, I would say, probably that high (indicating) from the table, on a leash, and a harness effect over him, and started to put the dog up on the step, and Mr. Crissman said, "You can't put that dog on here", and well, everybody on the bus naturally felt sympathetic toward (658) the lady and the man because it was raining, and it was very uncomfortable to get off.

Q. How did you know the attitude of the other passengers on the bus? A. It was obvious, everybody on the bus.

Q. How did they show it? A. By moving, and stirring around in their seats, as anyone would when they were disturbed.

Q. Do you move and stir around on your seat when you are not disturbed? A. Yes, I did and I was prompted to say something to Crissman, and insist that he let the parties on, that there would be no harm, and there were vacant seats in the back of the bus, and even though it was against the company's rules, that he would probably have showed a lot of good will to the company had he put them on there.

Q. You knew that letting the dog on a bus was against the company's rules? A. I didn't; and I have seen dogs on the buses.

Q. You didn't say that even if it was against the company's rules— A. Even if it was a rule that the company had, not to commonly let dogs on the bus, I think circumstances alter conditions, altered the rules, and I have always felt that an employee should take (659) circumstances into consideration before he passes judgment on a case.

Q. Those three instances, are there any more? A. Well, I have heard him make some pretty short remarks to passengers when they asked for directions, or for information, and he snapped them off very rough, and I don't know that he did it intentionally, and it may have been the man's attitude, and I never talked with the man, and I never had a conversation with him other than such as I have stated.

Q. All of those things made you report him to Mr. England? A. It did.

Q. When was that report made? A. That was in the latter part of the summer, I would say.

Q. Of 1935? A. Some time around June, but I hardly think so.

Q. Of June, 1935? A. Yes, and the way I fix that date in my mind is that I bought my house on or about that date, and it was subsequent to that that I was fixing the papers on it, and I had to go to Mr. Jones' house, and that is why I happened to be at the garage.

Q. After you made that complaint, he still remained (660) in the employ of the company? A. He was driving a bus up until quite recently, I think up to the time he was discharged.

Q. From the time he was discharged, did you have any cause to complain about him to the company? A. No, I wouldn't say that I saw any outstanding incidents.

Q. His conduct improved over that time when you reported him? A. Not his general attitude toward being sociable with the passengers, and he was never of that type that he was friendly with the passengers, or he spoke to them as they got off the bus.

Q. Is there a sign up there of not to talk to passengers? A. I don't recall such a sign.

Q. Do you know whether there is any such rule of the Public Utility Commission, that you are not allowed to talk to the passengers? A. I don't think that it would be reasonable to have a rule like that because many times a passenger has occasion to ask for information or directions and it is up to the driver and I believe it is his duty to give that information when he is asked by a passenger. That is the kind of information and conversations with passengers that I referred to.

(661) Q. On one occasion, that particularly peeved you, he had transferred you at the wrong point, to the proper bus; is that correct?

Mr. LYNCH: Now, we have been all over it before, and we have the entire circumstances, and he can't pick out one favorable incident of that and say that.

The whole thing is there.

Mr. BLUM: Are there any other incidents besides the three that caused you to complain about Mr. Crissman?

A. There probably has been other things that I observed, which had escaped my memory at the time, but there were enough and numerous enough that it aroused my feeling to the extent that I did make an official re-

port. I asked for leniency on behalf of the individual when I did that.

Q. And when you did report it, did you report all of the incidents or just the one about the transfer? A. I enumerated two or three different incidents at that time and I think I named one or two of them since, in discussing the matter subsequently.

Q. When did you learn that you were supposed to testify in this case? A. I was told about the first part of the week that I would probably be called. I was asked if I would be willing.

Q. Who consulted you about your willingness to tes-
(662) tify? A. Mr. England.

Q. Did you go over your story again with him as to the complaints that you made? A. I may have discussed some phases of it.

Mr. BLUM: That is all.

RE-DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. Joy, you spoke to me, my name is Lynch, right here in the room a few minutes ago. A. Yes.

Q. And I asked you to relate to me some of those instances? A. You did.

Q. And you related them to me like you did it here? A. Yes, sir.

Q. Where are you employed? A. Bureau of Internal Revenue.

Q. How long have you been employed there? A. Probably better than 18 years.

Mr. CARMODY: I would like to ask you a question:

By Mr. CARMODY:

Q. You have not *bee* here other days of this hearing? A. I have not, this is the first time I was ever in the building.

Q. Do you know of your own knowledge that this
(663) company has hired a detective to ride the cars and report violations of rules and other observations with respect to passengers? A. No, sir, I do not. I suspected—or I knew it was a common practice, but I did not know in this case.

Q. That is all.

By Mr. BLUM:

Q. I have one more question. When you made this complaint, who did you make it to? A. You mean up at the office?

Q. Yes. A. I think Mr. England probably was there, he was the first man I talked to, and then Mr. Arnold came out.

Q. Did he write it down in your presence? A. I don't recall. He made a note of it. I remember that he did make a memorandum of it.

Mr. BLUM: Thank you, sir.

(Witness excused.)

Whereupon GEORGE F. WILSEY was called to the stand upon behalf of the respondent, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. Wilsey, you are the superintendent of the (664) shop of the Washington, Virginia and Maryland Coach Company? A. Yes, sir.

Q. And you had such a position during this present year? A. That is right.

Q. And for some time before? A. Yes.

Q. How long have you been with the company? A. Eight years.

Q. Who was the day foreman there? A. Theodore Frederick.

Q. And the night foreman? A. Joseph Harmon.

Q. And did there come a time when you had certain conferences, or I will put it this way, have you during the past six or seven months had occasions from time to time to discuss the personnel of the shop with Mr. England and Mr. Arnold? A. Yes.

Q. Would you say that would be frequently or otherwise? A. Quite frequently.

Q. And will you state whether or not there were complaints made to you by Mr. England and Mr. Arnold, (665) relative to the conditions of the shop?

Q. Could you state some of the natures of *thos* com-

plaints? A. Well, we had a lot of dirty buses, and quite a few breakdowns in the morning.

Q. Were those breakdowns more frequent during the month of February and March?

Mr. BLUM: Than what?

Mr. LYNCH: Theretofore existing?

The WITNESS: There were.

By Mr. LYNCH:

Q. Have you talked with Mr. Harmon about those conditions of the buses, and Mr. Frederick about the condition of the mechanical workings of these things? A. Yes.

Q. Did you ever have any trouble with the arburetors? A. Yes.

Q. By the way, can water and dirt and sand get into the gas tank there from the floor of the garage? A. I don't believe it can, no.

Q. Has anyone ever reported to you, Mr. Frederick or Mr. Harmon or anyone else, that water or sand and dirt was getting down the gas lines? A. I would like to just add something to that other question, if I may, if that would be O. K., if those grease pits are not clean, (666) particularly in bad weather such as a rain storm and a lot of mud gathers underneath the coaches, we do have a lot of bad roads and the mud will accumulate, and that is knocked off at night, and it will clog up the grease traps, which is a standard practice in most garages, and if that is not cleaned up the water will pile up on the floor, and this gas filler pipe is close by, say about five feet from the place, and if the pits are not cleaned out that water will accumulate, and we have had that happen quite often.

Q. Should those pits be cleaned out? A. They should. That should be taken care of whenever the occasion arises, particularly in those cases.

Q. Now state whether or not there has been frequent occurrences of carburetor trouble in the last couple of months. A. There has.

Mr. BLUM: I didn't get that.

(The question was repeated by the reporter.)

By Mr. LYNCH:

Q. Will you state the nature of that trouble? A. Well, we have had water in the carburetors and in the strainers, and mostly it would accumulate in the strainer, and we have a strainer in the line, separated from the carburetor and the line.

Q. Was anything relative to a foreign substance in
(667) that? A. We had one case that was quite a problem. There seemed to be a gathering of sand or brown sugar, and we saved some of the contents of it and had it analyzed and the chemists of the City Service was not able to determine what kind of ingredient it could be. It would burn like sugar, and leave an ash, and we tried to determine what that substance was by sending it to the City Service, and we called the engineers up and they were not able to find out just what it could be. Up to this time we don't know and I have taken one case, and laid it out, and strike it with a match and it would burn down into a kind of a soft mass, and that would keep on happening, and I couldn't locate what that trouble was, and I don't know to this day.

Q. Mr. Wilsey, do you ever have occasion to go back to the shop at night? A. I generally drop back once in a while.

Q. Now I will ask you with reference to both the day shift and the night shift, whether, say, in a period of time between January 1, and March 1, if you observed the personnel of the shop in huddles? A. Yes that has been a factor that has disturbed me, and I tried to analyze what the condition was, and time and time again I have had my shop foreman, who was Mr. Frederick, and I would say, "Fritz, will you please go out and break those huddles up, I don't know what is the matter with
(668) them and I had those conferences with him and they would get out in corners, and they would just tie up, and that would happen all through the day, and it was just a constant breaking them up.

Q. Would they be working together in these huddles or just engaging in conversation? A. Just standing there. When I would walk near them, I had taken on my shoulders a certain amount of work that I handled personally, and when I would get out there they would split up, that is, if I told Frederick to do it for me.

Q. Have you called to the attention of your foreman the complaints which were made to you relative to the

service, and the breakdowns, and the various things? A. We have talked that over confidentially many times.

Q. Did you ask them to improve them? A. Yes, we have tried to remedy all of the conditions that would rise.

Q. Have you had occasions of buses being, or parts of buses, and motors, or other parts of the machinery, operating a bus, injured or damaged by reason of lack of grease being placed in the parts? A. We have had those occasions, and we have had those conditions, plenty of them.

Q. Now, certain persons that were separated from (669) the service in the first part of March, March 4th, and March 5th, or March 6th, I think the dates have been testified to here, did you make recommendations to Mr. Arnold and Mr. England relative to those persons? A. Well, Mr. Arnold and Mr. England, we had a conference in the office and they asked me to straighten it out, and to use methods that would clear it up once and for all.

Q. What methods were they referring to? A. Well, the person that has to maintain the equipment in the proper running conditions, and there is only one answer to it, to add new men and remove the old.

Q. And were these men removed by reason of the inefficiency and lack of co-operation with you with regard to the maintenance of the equipment, and the condition of the buses? A. Up to that time I would say that there was a lack of co-operation. It was noticeable the last few months.

Mr. BLUM: I move it be stricken out, because it is not responsive to the question. The question was, "were they removed for that reason"?

Mr. LYNCH: I will ask that question over again. Were these men—

Mr. CARMODY: Strike both the question and the answer and it will be asked again.

(670) By Mr. LYNCH:

Q. Did you notice an increasing of lack of co-operation with you on the part of the foreman and men with you? A. It was very noticeable.

Q Will you state whether or not the separation from

the service of these men the first part of March was the result of the instances which you have referred to here? A. I would like to say that that was a build-up, and we have been going over that some time in the past.

Q. I will ask you specifically whether any of them were let go because of the fact that they were interested in a union, or members of a union? A. I couldn't say that, I don't believe they were; and I don't see that they would have any influence on it, but it was just a coincidence they came together.

Q. Did you know who were members and who were not members? A. I did not question that.

Q. Did you actually know? A. I had never seen a union card.

Mr. BLUM: Answer the question, will you please?

The WITNESS: How do you want me to answer it?

Mr. BLUM: The question was, "Did you know?"

The WITNESS: There was only one man that I knew, and I wasn't sure whether he was or wasn't, and that was (671) Joseph Harmon. The rest of them I wasn't interested one way or the other.

Q. Did you say to Joe Harmon that you were surprised that he had joined the union without letting you know about it? A. Not in those words, no, sir.

Q. What did you say? A. I asked Joe, and of course, to start back, the man has been with me a long while, nine years, and I discharged him once more, and this is the second time, and the third time he has been back in my employ, and naturally, the foreman and the superintendent have to depend upon confidences, and we all recogize that fact, and I never realized myself that I had taken myself from the shop, but I always considered myself one of the men, and this thing taking place as it was, I heard something pertaining to it, but I asked him frankly, I said, "Joe are you an organizer of this?" and he said, "More or less" and I said, "Be sure that you are right", and that is what I said, and I said, "Get into a good organization", and I said, "I believe a union is a fine thing, if you get into the right union", and I still believe that. That is all.

Q. Did you say to Mr. Frederick any language such as this; that you weren't discharging him on account of the union, but on account of the underhanded methods (672) used—did you make any such statements to Mr. Frederick as that? A. No.

Q. Did you make any statement to anyone that was fired, and tell them directly or indirectly that they were fired because of their joining the union, or their activity in the union? A. I did not do that. When I let them go, I told them to go in and get it and they turned around to me, and said, "Am I going on account of the union?" and I told them all, "No", and I said, "That has nothing to do with it, and that happens to be a coincidence", and they were all hot at it, and I couldn't help that.

CROSS EXAMINATION.

By Mr. BLUM:

Q. How many men were there employed in the night shift? A. Would you mind my looking at a list? I have got other things on my mind.

Q. All right. A. What do you want to know?

Q. How many men were there on the night shift? A. That night there was ten, or nine men.

Q. What night is that, that you are referring to? A. That there was nine men on from—I haven't got the dates on that, this was from Friday to Wednesday, but there was one man off sick for five days.

(673) Q. Who were those men? A. There was Atwell, Garrison, Harmon, Miller, Moore, Smith, McCawley, and Dove.

Q. Were they all of the men on that night? Did you have any other men working at night? A. Yes, a man named Dameron, Turner.

Q. All of those names that you have read, with the exception of Dameron and Turner, were they all fired the same night? A. No. Dameron is a pretty good boy.

Q. Dameron wasn't fired? A. No.

Q. Do you know whether he is a member of the union? A. I never questioned any of them whether they belonged to the union or not, except Joe Harmon, and he didn't admit whether he was or wasn't.

Q. Was Turner fired? A. No.

Q. Were all of the others fired? A. Yes.

Q. The same night? A. Yes.

Q. Why did you pick out Dameron and Turner and say that they weren't responsible for these incidents that you described, and all of the others were? A. Well, in-
(674) dividualism will always shine regardless of where you put it; that is my answer to that. I mean that those men stood out by themselves as good, competent, steady, clean workers.

Q. And how long had Dameron been in your employ? A. From July, 1934.

Q. And how long had Turner been in your employ? A. July 4, 1933.

Q. And some of these other men that were fired, can you give me those dates? A. That was July for Atwell, 1929; and Garrison, January, 1935; and Harmon, September, 1927; and Miller, September 23, 1935; and Moore, February, 1935; and Smith, May of 1933, and McCauley February 11, 1936. We had just put him on. That is 1936, and he had only been there a month; and Dove, February of 1936.

Q. Now, what was Dove's job? A. Cleaner, and batteries, and so forth.

Q. A cleaner—just what was his job as a cleaner? A. Well, he was a kind of a half-way man, and Mr. Harmon can use these men any way he wants to use them; that is his job; and I always make my foreman entirely responsible, and I hold them responsible, that is it, and their word is law with me, and I try not to interfere with my foreman, and whatever he does, we talk it over, and
(675) he is the last word.

Q. Was he the man that would bring complaints to you about the inefficiency of the men? A. He could if he wanted to, but I could observe these things myself, and I would walk through the shop and stay later, and look around a lot.

Q. How often would you come to the garage at night? A. Sometimes I would never come in, and I would stay outside.

Q. Would you be able to observe what went on when you stood outside? A. It is all wide open, and you can see.

Q. How often would you come there and go inside? A. Once a week, or maybe twice a week.

Q. What time would you get there? A. Maybe 9 o'clock, and 10 o'clock, and maybe I would stick around early in the evening and watch them.

Q. How long would you usually stay? A. Maybe an hour, or a half hour.

Q. Ever more than that? A. Sometimes maybe three hours, or sometimes I would stay there all night.

Q. Was it usual for you to come there and stay until about two o'clock in the morning? A. I wouldn't call it (676) unusual. That is my privilege.

Q. Yes, but do you do it often? A. Well, not necessarily, no; it is not a customary practice for a man to work all day and then work all night.

Q. It isn't a customary practice for a man to work at night and come back at 10:30? A. A man with a responsible position, it would not be anything out of order.

Q. Why is it less responsible at 10:30 in the evening than 2:30 in the morning? A. Just like you change your hours, and you have that privilege.

Q. Did you make a regular practice of coming back to the garage at night? A. You have that down there once.

Q. You told me that you came to the garage on an average of once a week to go inside, and how many times did you go to stay on the outside? A. Quite frequently.

Q. And the men wouldn't know you were there? A. No.

Q. Nobody would see me but sometimes they would, and sometimes they wouldn't.

Q. Were you coming back for the purpose of spying (677) on them? A. Well, you wouldn't call it spying, and I wouldn't call my position there spying, would you?

A. I am asking you the question. A. I am just looking around.

Q. You came there at night, at 10:30 at night, and stood on the outside where nobody could see you, and observed what went on in the garage, is that true? A. Yes.

Q. Now, when you came back there at 10:30 at night, and observed what went on there— A. I would like to explain why I do that, if I may.

Q. Go ahead; I would like to hear it. A. It might be interesting to you. We have had a lot of scratches and cuts and bumps and tears in the buses, and you could never determine how it was taking place, particularly the *neew* jobs showed scratches and scars the whole length

of them, and those scars will average around $100 to remove them, and you have new metal that you can't straighten out, and it has to be replaced, and that is the reason for that.

Q. Would that be caused by the drivers or mechanics? A. They back those back and forth and there might be a driver come in, and many a time I have stopped a driver and said, "You handle that bus carefully" and when they see me there they do slow up.

(678) Q. When you made these observations about these scratches did you ever notice that they were caused by the mechanics? A. That is why I was there.

Q. Did you ever notice that it was caused by them? A. I have seen it happen plenty, yes.

Q. Was it about half of the number of scratches that were caused by the mechanics, or more or less? A. Well, it is questionable; I couldn't say just exactly how many one way or the other, and my idea was to prevent it as much as possible.

Q. When you were standing outside and looking in, and you saw one of these mechanics handling a bus so carelessly that he put a scratch on it, would you go inside? A. If I saw him do that, I certainly would.

Q. How many times in your eight years, did you find it necessary to go into the garage after you were standing outside, and observe one of these things? A. They seem to sense when you are around, and they know it, and they can smell you, so that it is questionable whether you could ever get around a place without being noticed.

By Mr. CARMODY:

Q. Is that a fact or an opinion? A. That is a personal opinion.

By Mr. BLUM:

(679) Q. You didn't care whether they saw you or not; you didn't make any effort to hide? A. Sometimes by hiding you could see things that you wouldn't see, otherwise.

Q. Why would you want to hide? A. Well, you figure that out.

Q. Will you answer my questions, please? Why would you want to hide? A. I would like to see things as they go, and not as they would go if I was there. I would like to see the natural conditions of things.

Q. To get back to my other question, how many times in eight years did you find it necessary to go into the garage, after you came from your hiding place, and saw something going wrong in the garage, to correct that condition? A. You mean just to correct what condition?

Q. That you noticed a scratching of a bus, or something like that? A. I just explained to you that in the last year particularly from November, we have just had new equipment, and it showed up more, and old equipment, the scratches wouldn't be so noticeable, but on these new coaches, we have a center unloading door and these things become more prominent, because you have (680) more to repair, and in the old buses, you could go along to the side, and the door being metal—

Q. I am just going to ask you to answer my questions, and not give long speeches. A. I am telling you.

Q. I didn't ask you that. I asked you how many times in eight years— A. I haven't kept track of that.

Q. Could you make any estimate? A. No.

Q. Do you know how many times a month? A. That is the same thing as a year. If I say ten times a month it is one hundred and twenty times a year.

Q. Was it as much as ten times a month? A. That would be one hundred and twenty times a year.

Q. Was it that much? A. I couldn't say.

Q. Your old buses were new at some time while you were still in the employ? A. They were never new, but they were always old, and it was 1925 when I got there, and it was 1925, and I came there with the men, and I came there in 1928, and those buses were old at that time.

Q. Three years old? A. Yes.

(681) Q. And you still have that same equipment operating today? A. Yes.

Q. I see. Now, to get back to Mr. Dove; who assigned the men in the garage their work? Mr. Harmon, at night? A. We talked that over, and we used them more or less, but he could use his own judgment on who he wanted to use. I gave him that privilege.

Q. You trusted him implicitly, didn't you? A. I would say I did, yes.

Q. And he was there longer than you were, wasn't he? A. He was with me in another company, and he went with this company and I went with another company, and I came back to this company after a year, and he was there a year before I came.

Q. Did his being with the company have anything

to do with your coming there? A. I don't know whether it would or not. My past record would speak for itself.

Q. I ask you.

Mr. CARMODY: Answer the question.

The WITNESS: I said I don't know.

By Mr. BLUM:

Q. Did you ask him to speak to Mr. Arnold at any (682) time for you? A. For me?

Q. Yes, before you were employed by them? A. I don't remember ever saying anything of that kind.

Q. Did he ever vouch for your workmanship to Mr. Arnold prior to your employment? A. I don't know. I know none of those things.

Q. In those nine years, up until the time he was discharged, you say you trusted him implicitly; did you ever have any cause for complaint against him in those years, while you were there? A. Yes, I told you that once. I let him go one time.

Q. When was that? A. I haven't got that time.

Q. Do you recall how many years ago it was, or how many months? A. This wouldn't be the exact date or the year, but I will say five years ago, four or five years ago, and I wouldn't hold myself to that. That is just optional.

Q. He came back to your employ, and did you send for him or did he come back himself? A. Is this necessary?

Q. Yes. A. O. K. I let him go, and he went to work for the Aero Auto Company, the Chevrolet dealers, and (683) he kept coming to see me, and they had him on a flat rate system, and he wasn't making any money, and he came to see me, and he said that he would straighten himself up, and that is the way he came back, and it was very friendly and personal.

Q. And you took him back? A. Oh, yes.

Q. From the time that you took him back, to the time he was discharged, was he still the foreman? A. I would have to go back over those records, and I don't remember that. I had another man there. I have had three or four foremen in between that time, a man named Freeman, and a man named Lord.

Q. He was promoted while working in your employ, wasn't he? A. Yes.

Q. And why was he promoted? Was it because his work was rather efficient and good? A. Well, to go back over that, he knew the old equipment, and he did not the old equipment.

Q. And because of his knowledge of that equipment and because of his ability, was he promoted? A. Yes, he went along that way.

Q. Now, when you described this condition in the pit, with the grease backing up in the pit, and you say that it is possible for water and dirt to collect? A. Un-
(684) der one condition, I would like to say that. The gas filter cap would have to be screwed down tight.

Q. Can that cap be screwed down tight? A. I went back right away and checked that the other day.

Q. Was that the first time you had checked that? A. I checked it once before, a year or so ago, but we have a gas man that takes care of all that, and he is supposed to report those conditions to me.

Q. Do you know whether or not a new cap has been recently put on? A. That is just there as it was, and no change has been made, and it is just as it was.

Q. Now, since— A. There are two tanks.

Q. Does either one of these tanks have a loose cap? A. The cap screws down, and one cap is what we call a male cap—that is a female—and the other is a male cap.

Q. And is it possible for the water to flow over either one of those caps and get down into the tank? A. The one on the west side of the building, no.

Q. How about the other? A. If the cap wasn't screwed down securely it may, and if the pits were not cleaned out, and the water would have to come up, and
(685) here is a pit four feet deep, and the area of the floor, we have a light sweep there for the washing of the coaches, I would say that there would be about 1,000 gallons of water would gather before that would get up there.

Q. You said that that happened, that it did flow over the cap? A. If the pits were not cleaned during bad weather.

Q. But you said it did happen? A. I said it could happen. It happened once or twice during the winter, and we had a man up there to pump the bottom of the tanks out with a machine that he had there. There was no trace of water found at that time.

Q. And the substance that you find in the gasoline not even chemists know what it is, isn't that true? A. That is the report.

Q. And you are not attributing to these men the fact that they put some foreign substance in the gasoline? A. I am not accusing anybody of putting anything in the gas.

Q. You never did make any such statement, did you? A. I believe I talked it over with Frederick, and he said, "Somebody might be putting something in that gas."

Q. Did you consider that when you discharged these men? A. It had no bearing in that way, no.

Q. You didn't even consider the foreign substance (686) in the gas at all, when you did that? A. I had ideas—but that is out.

Q. You didn't consider it? A. I did a lot of thinking on it but I wouldn't accuse anyone of a thing like that, that I wasn't sure of.

Q. Did you consider that at all in discharging these men? A. I couldn't say that I did.

Q. All right. You recall the testimony of Mr. Harmon about the night of the meeting when you came back to the garage at 2:30 in the morning and asked him to go to see Mr. Clark? A. Yes.

Q. What date was that? A. I don't have that date. I should have it down here. I just haven't got it.

Q. Did that actually take place, did you come up there and ask him to go and see Mr. Clark? A. I would like to see him.

Q. Why did you want to see Mr. Clark? A. You can't tell. I might have been interested, and nobody knows.

Q. You might have been interested in what? A. In investigating the union; and I may want to become a member.

Q. Did you know that there was a union at that (687) time? A. I couldn't help but know it at that time, but my other plans had already been made.

Q. I see. Now, when had you made these other plans? A. I explained to you some time ago, that about a month before that we had considered a drastic change.

Q. I see; and you took no action for an entire month on that. A. I was preparing for that quite a while. I injected a number of mechanics in, and I wanted to get mechanics that were capable, and that had initiative, and

really knew what it was all about, and that had training.

Q. Who put the ad in the papers? A. I put the ad in the papers.

Q. Why was it put in on February 29th? A. It just happened to be a coincidence, and I thought I would get it over quick.

Q. All of these things were purely coincidences? A. Yes.

Q. Now, when you asked Mr. Harmon to go up and see Mr. Clark, what happened? A. We walked down the road, and the men were running around and cars were going around, and it was like being in the middle of the traffic at noon in the city.

Q. You didn't resent that, did you? A. The traffic doesn't bother me any.

(688) Q. What happened after that? A. What do you mean by "Happened"?

Q. When you saw all of this traffic? A. Well, the men came along, and Joe asked if Mr. Clark had gone, and they said "Yes" and Joe said, "He has gone." I don't know who the man was that I met that I talked to, on the road, because it was just one of those conditions like a crowd, and you would never notice an individual, unless he was a Chinaman, and it was all a mess.

Mr. LYNCH: Did you meet Harmon? A. Yes.

By Mr. BLUM:

Q. Did you meet Mr. Arnold that night? A. Yes.

Q. Where did you meet him? A. Yes, he was coming down from the west, coming east.

Q. Did he stop his car? A. Yes.

Q. Get out and talk to you? A. He didn't get out, and he started to talk, and mumbled some old thing.

Q. Did you hear what he mumbled? A. No.

Q. He was all excited? A. Yes, he was kind of nervous.

(689) Do you know what he was nervous about?

Mr. LYNCH: Just a minute. I submit you can't tell what was in somebody else's mind.

Mr. BLUM: I asked him if he knew.

Mr. LYNCH: You can't do that. I might have some

suspicion of what might be in your mind, but I wouldn't dare express an opinion about the matter.

Mr. BLUM: I asked him if he knew.

Mr. LYNCH: He can't know unless he said something, that is all you can get in the testimony.

Mr. CARMODY: If he will tell what Mr. Arnold said to him, I would like to ask the witness this question:

How long have you known Mr. Arnold?

The WITNESS: You mean personally?

By Mr. CARMODY:

Q. Yes. A. I would say, I have always known the man's name, I would go back and say 1925 or 1926.

Q. How long have you worked for him? A. Eight years.

Q. And have you on occasions talked to him frequently during that time? A. Yes, quite frequently.

Q. Has he given you any orders during that time as head of this company, and you as superintendent? A. (690) Yes, plenty of them.

Q. Does he mumble orders to you? A. No.

Q. Have you ever talked to him before when he mumbled and you couldn't understand what he said? A. I never talked to him under these conditions where he jerked a car up and would go away.

Q. And the question here, What did he say to you, if you remember? A. I remember some of the things he said, that the thing wasn't like this when he was a boy, and he had to work for what he had, and struggle for what he got, and something along those terms.

Q. Did he mumble that or did he say that so that you could understand it? A. He had a cigar in his mouth, and he kept chewing on it, and I got the words in between, and he was kind of excited.

Q. What else did he say to you that you understood?

By Mr. BLUM:

Q. Did he say anything about a union, and he never had a union in his place? A. He might have said that, I didn't hear him.

Q. You didn't hear him say that? A. Men were all around me.

(691) Mr. CARMODY: What did he say that to you for, that he never had a union?

The WITNESS: May I answer it my way?

Mr. LYNCH: May I take an objection?

Mr. CARMODY: Sustained.

What did he say to you?

The WITNESS: You have it down. He said things wasn't like that when he was a boy and something like that, and he had to work for what he got, and he had to work his way up, and he believed in every man standing on his own feet.

Mr. CARMODY: Was he talking to you?

The WITNESS: I guess he was talking to Harmon more than he was to me.

Mr. CARMODY: What was the occasion for the conversation? How did the conversation take place?

The WITNESS: Well, the men were going back and forth across the road, and they were gathered there in a crowd.

By Mr. CARMODY:

Q. What men? A. The men from the shop, the drivers and so forth.

Q. The employees? A. Yes.

Q. On their working time? A. No.

Q. They were not working, and those were not their (692) working hours? A. No.

Q. They were on their own time? A. Yes.

Q. Well, go ahead. A. He had to stop and I happened to be there when he stopped; and you wanted to know how we had met.

Q. Who were you with? A. I was with Joe Harmon.

Q. Where were you standing? A. I was standing around the automobile, and I moved away awhile there.

Q. How far was this from the garage? A. 350 yards.

Q. On the same street with the garage? A. It was running on a 45 degree angle from the north.

Q. How far was it from Frederick's home? A. 400 yards.

Q. Do you know what men were doing out at that hour of the morning? A. I couldn't help but know at that time.

Q. What was it? A. They were holding a meeting of some kind.

Q. The drivers and mechanics? A. Yes.

(693) Q. Now, were there some of your employees who were supposed to be working that night in the garage? A. That was on their noon hour.

Q. It was on their noon hour? A. Yes.

Mr. LYNCH: Was it lunch hour?

The WITNESS: They call it lunch hour.

By Mr. CARMODY:

Q. That is between one and two o'clock in the morning? A. I will say this, that that is up to the foreman, what hour he wants to give them, whether it is twelve to one or one to two, the conditions make the case.

Q. Do you know what hour he was giving them at that time? A. I wouldn't say, no. I never questioned them.

Q. Do you know whether they were supposed to be working in the garage, whether they were working on the hours which they were supposed to be working? A. As far as I know.

Mr. CARMODY: All right.

By Mr. BLUM:

Q. Now, Mr. Wilsey, with further reference to this conversation with Mr. Harmon and Mr. Arnold, did you hear Mr. Arnold mention the word "union" in that con-
(694) versation? A. I can't say I did or not.

Q. Do you recall the words of Mr. Harmon, used on the stand, that "I will not recognize a union, and you can put that in your damn pipe and smoke it"? A. He didn't say that.

Q. You didn't hear him say that? A. No, sir.

Q. Could he have said that without your hearing it? A. He could have said anything.

Q. And you wouldn't have heard it? A. If it was said loud enough, and I was paying more attention to what he was saying.

Q. He wasn't speaking in a loud tone at all there, you said he mumbled? A. He was chewing on a cigar and all excited, and men were all around him saying "Hello, George" and that is the way it was.

Q. When was it that you first noticed these men standing around in huddles in the garage? A. I would go back three or four months on that.

Q. Did that disturb you very much? A. Yes, it did, knowing the past records of the men, and the way they were working before; I would say it did, and I would—I was seeing the system break down.

Q. During the first month, did you attempt to break (695) that huddling up? A. Yes.

Q. During the second month? A. I will verify that.

Q. During the second month, did you attempt to do that? A. Yes, it was becoming more serious.

Q. And when did it reach its peak? A. When it reached its peak?

Q. Yes. A. You mean as far as I could take it?

Q. When it became most serious. A. During this period, this March, and February, around the last of February.

Q. The last of February, the day you put the ad in the papers? A. That is when I was taking drastic steps.

Q. In the answer filed here, if you are familiar with it— A. I was only around here a little bit once in a while.

Q. The answer states that Mr. Arnold and Mr. England discovered that their union existed on February 28th. Did you find it out on the same day? A. Very frankly, I wasn't very much interested one way or the other.

Mr. CARMODY: That isn't the answer.

(696) By Mr. BLUM:

Q. When did you first find out that there was a union? A. The date?

Q. Yes. A. I couldn't say.

Q. Was it about February 28th? A. I couldn't say whether it was the 28th or not.

Q. Was it before you put the ad in the paper, or after? A. The ad was in the paper after.

Mr. HUGHES: Just a minute. That answer is not clear, Your Honor.

Mr. BLUM: It is not clear to me.

By Mr. BLUM:

Q. Was it before you put the ad in the papers, or after you put the ad in the papers, that you discovered that there was a union? A. I didn't know whether there was a union or not, and it was just a rumor.

Q. And there was a rumor? A. Yes.

Q. Had you heard the rumor prior to the day of the ad or after the date of the ad? A. The rumor was there.

Q. Prior to the date or after the date of the ad? (697) A. Let us see.

Q. The ad was on February 29th. A. February 29th was the date of the ad?

Q. Yes.

Mr. LYNCH: That is the date it appeared in the paper.

Mr. BLUM: Yes.

The WITNESS: I had rumors of it.

By Mr. BLUM:

Q. Prior to that day? A. I wouldn't say prior, I would say about that day.

Q. The same day? A. Yes. Well, it might have been the day before.

Q. The day before? A. Yes.

Q. Now, did you get any responses to that ad? A. I should say I got about five hundred or six hundred.

Q. Out of that five hundred or six hundred, did you pick out men to replace the men that you fired? A. I picked out some men, yes.

Q. When these men were fired, had you already had

a new crew together to go into their place the next day? A. Yes.

Q. An entire new crew? A. Yes.

(698) Q. And they all went in to work immediately as soon as these men left, is that true? A. That is right. No, there was a man named Boomer and Williams, and they worked a night with Joe Harmon.

Q. They worked one night with Joe Harmon? A. Yes.

Q. Now, the night after all of these night employees were dismissed, you have a full crew working at night? A. Yes.

Q. You did have a full crew? A. I put a crew right on, yes.

Q. Were they men transferred from the day, or new men? A. That first night, I had one of the old men, and I had two of the old men, and there was a man named Dameron and a man named Turner, that filled in that night.

Q. Dameron is a day worker, isn't he, and doesn't he work during the day now? A. I am breaking him in as a mechanic, and as a shop helper.

Q. You shifted him from day work to night work at that time, didn't you? A. No, he was already on that shift.

Q. He was already on that shift? A. Yes.

(699) Q. Is he back in day work now? A. Yes.

Q. When was he shifted to day work? A. I haven't got that date, and I would have to go over the time cards.

Q. Was it recently? A. Yes.

Q. And it was a result of getting a new man in his place at night? A. Yes.

Q. Now, what other new men went to work on the first night after these men were fired? A. Do you want their names now?

Q. I want the new men, not men that were shifted from day, but new men.

Mr. LYNCH: Do you want the number of names?

The WITNESS: I have got one of the time cards here, but I don't think I have got the names here. I haven't got the new men's names, and I couldn't recall them all right offhand.

Q. Just prior to the firing of these men, when did you hire the last new man to take the place of these men that were fired? A. The last new man?

(700) Q. Yes. A. I have already let five go, and I just put another one on last night.

Q. I am talking prior to this time these men were fired? A. You mean when I hired them, and the day I fired them, and you want to know when I had the other crew ready to go in?

Q. Yes. A. It was Sunday or Monday, I think it was, Sunday or Monday, one of those two days.

Q. Is that prior to the dates that these men were fired? A. No, I waited until I removed them.

Q. You waited until you removed them? A. Yes.

Q. And then you got new men? A. Yes.

Q. How was it you built up for a long period of time the fact that you were going to let these men go? A. Mr. Arnold told me to take drastic measures and clean the things out and reorganize.

Q. That was several months ago? A. Yes.

Q. And for those several months you were building up an organization to take the place of these men, isn't

(701) that what you testified to? A. Yes.

Q. Then how was it that you let these men go? A. I never put an advertisement in the paper before, and I was expecting to have cooperation by feeling out and dragging men in this way, and I never did that before.

Q. About four months ago, Mr. Arnold told you to take drastic action, and you waited until February 29th to put an *add* in the paper? A. I didn't say four months, and if I said four months ago that is a misstatement on my part.

Q. You can correct it now.

Mr. LYNCH: I think counsel may have made the mistake as well as the witness.

Mr. BLUM: I will apologize if I did.

By Mr. BLUM:

Q. When was it that you were told? A. Around February 25th or so.

Q. Around February 25th or so.

Q. And you waited four days to put an *add* in the paper? A. I felt out first, and I can prove that I felt

out the pick in men, and I could get them, and I tried to make contact with them and I couldn't do it. I checked on some men, and I couldn't get the men that I wanted to get.

(702) Q. On direct examination, didn't you testify that for a period of four months, you were getting ready to make a new organization, because you were worried about this huddling? A. I have been bringing men in and dropping them off right along. I can show you that.

Q. And you fired these men before you had created that organization, isn't that true? A. I wouldn't say that. I have some very capable men and men that have excellent past records, or technical men, and if you want me to say, I have one man that has been a Navy aviation mechanic, just discharged from the Navy, that is thoroughly capable, and I find him so, and of course I could go down the line like that.

Q. But didn't you testify a few moments ago that you didn't get the last man to supplant the men that were fired until several days after they were fired? A. If you go back, now, I said that this Boomer and this Mr. Williams worked at night with Joe Harmon, to get an idea of the operation of those schedules.

Q. That was two out of how many men that were working at night? A. They were the key men, and we always have key men.

Q. Two men out of how many men? A. Ten men.

(703) Q. And didn't you testify a few moments ago that you didn't complete that night organization until several days after these men were fired?

Mr. LYNCH: I submit that there is no such testimony in the record as that.

Mr. BLUM: Do you want it read back?

Mr. LYNCH: Or you can ask the witness again.

Mr. CARMODY: It is very difficult to find it.

Mr. BLUM: May I ask that again?

The WITNESS: I don't quite understand the way you mean that. I had two old men on this shift, and I

put two men on the night before, whatever that date was, and I haven't got the time sheets to show you the dates, and I explained to you that they were key men.

Mr. CARMODY: You said that very same thing in your other answer.

The WITNESS: All I need is ordnary laborers, and cleaners, and greasers, and unskilled labor.

Mr. LYNCH: When were they put on, that is what we wanted to know. Were they put on when these men went out?

The WITNESS: I put on four or five, and kind of worked the crew back up to its full capacity again.

By Mr. CARMODY:

Q. Isn't this a very simple thing? You keep pay (704) roll records, do you? A. I have a clerk for that.

Q. The company keeps a pay roll record? A. Yes.

Q. Wouldn't your pay roll show exactly every hour that every employee worked? A. Yes, that is what I have in mind.

Q. Can't you get that? A. If you want me to bring that here, I think that we can do it.

Mr. BLUM: I would like to see it.

Mr. CARMODY: Let us put down the last night that these men worked, and the night on which they were discharged, and show their names, and the names of all of the other men that worked, and then show who worked the next night, and the next night, and show when each man came to work, and how much, or what his number was on the pay roll.

The WITNESS: You take twenty-five men and that is hard to remember the names and times.

By Mr. BLUM:

Q. You had charge of firing these men, did you not? You testified to that. A. Yes.

Q. How did you go about firing Harmon, for instance? A. Well, I said, "Go get it."

(705) Q. Just like that? A. Yes.

Q. When was that, had he completed his day's work? A. Yes.

Q. Was his week over? A. I don't know whether that was Saturday morning or Sunday morning, but I can bring the pay roll here.

Q. You merely said to him, "Go get it"? A. That is right.

Q. Had you given him any previous warning?

Mr. CARMODY: Had you notified him that because the work was inefficient there that you were going to get rid of him, and the rest of the staff?

The WITNESS: No.

By Mr. BLUM:

Q. Do you know how he knew what you meant when you told him to "go get it"? A. The agitated feeling that there was there.

Q. The agitated feeling about what? A. When a man is friendly with you he generally talks to you, but when he grunts and looks at you with a scowl, you can really sense a thing like that. I can.

Q. You merely said to him, "Go get it" and he turned around and went in the office and got his money? A. That is right.

(706) Q. And no conversation with you at all? A. He didn't give me a chance.

Q. He didn't give you a chance? A. I never saw him, but he rushed right out, and was gone.

Q. He didn't ask you why he was fired? A. He said, "I guess I am going on account of the union" and I would like to say exactly what I said to him.

Q. Go ahead. A. I am trying to place those words. I will say, "Well, you can figure it out that way for yourself."

Q. You told him that? A. Yes.

Q. Did you ever tell him of an experience with the union? A. A friendly sort of way, we did, and we talked on and off like that.

Q. What did you tell him about your experience?

Mr. HUGHES: We would like to have the time specified.

By Mr. BLUM:

Q. Was it at the time you fired him? A. It was a few days before that.

Q. Had you already heard of these rumors? A. I went over that with him once before.

Q. Did he ask you about your experience, or did (707) you volunteer it to him? A. Well, I tried to make it clear that we have always been friends, and more or less the things just came up that way.

Q. How did the conversation start, in which you told him your experience, that is what I want to know. What did he say to you, and what did you say to hm? A. I said, "Joe, do you think you are doing the right thing, and if you are going into an organization" and I am just picking this stuff back, and I never thought I would have to retrace things, and I said, "Be sure to get in the right kind of an organization, and be sure you are right, and use your own judgment, but be sure you are right." I said, "If you are going to get into a union, be sure it is good. Be sure that it is honest in its dealings, and I know that is an essential thing, and everything has got to be fair and square," and I realize that.

Q. What did you tell him about the union you belonged to? A. I said I had some sad experiences in New York.

Q. Did you tell him what those were? A. I consider them in the past, that maybe I made a mistake at that time, and I guess I was young at that time, and things just didn't move the way I thought they were going to go.

(708) Q. And your personal opinion was? A. To be careful next time, and that is fair.

Q. And you were never a member of a union from that day until this? A. And the first time I heard of this union was here the other day, and I didn't know whether it was the American Federation of Labor.

Q. You were never a member of any union from that day of your sad experience in New York to date? A. That is right, up to the time I enlisted in the service.

Q. Why did you think it was important to tell Mr. Harmon of your sad experiences?

Mr. HUGHES: The witness didn't say he thought it was important; and he testified just the contrary.

Mr. CARMODY: The question might be rephrased.

By Mr. BLUM:

Q. Well, under what conditions were you and Mr. Harmon discussing that? Were you at work? A. It was his lunch hour.

Q. At night? A. Yes.

Q. At what time? A. I couldn't say what time that was.

Q. Was it the day of the meeting that you wanted (709) to see Mr. Clark? A. By the way, it was that day.

Q. It was? A. That is right.

Q. Why did you discuss the question of the union with him that night? A. Well, we have always discussed things more or less, personal things, and sometimes my advice would be good and sometimes it wouldn't and in a complete investigation of anything of that kind is a factor, and I believe in a man having his eyes opened in a thing of that kind.

Q. And did you often come down to the plant at 12:30 to discuss personal things with Mr. Harmon? A. Well, whenever we get together, we would talk personally, yes.

Q. Was that just getting together, or were you there on business? A. You could call—when I am there, I am on business, and I have testified—

Q. And you discuss personal matters with the men while you are there on business? A. I very seldom have contact with the men in the shop. I leave that up to my foremen.

Q. You never made it a rule of the shop that the men were not permitted to discuss personal affairs at some time during the night?

(710) Mr. LYNCH: Do you mean lunch hour?

Mr. BLUM: I mean any time.

The WITNESS: If a man has a job on one side of the building, and if a man has a job on the other side of the building, and each drop their jobs and get together and one goes from one job to the other, just to discuss personal matters, I don't allow that.

Mr. BLUM: Now I will ask you the question again, Mr. Wilsey, if you will answer it, please. Did you have a rule that the men were not permitted to talk with each other about personal affairs?

The WITNESS: I never heard of a ruling of that kind.

Mr. CARMODY: That is a fair answer.

By Mr. BLUM:

Q. And the men could have those discussions if they wanted to? A. Under the conditions that I just explained to you, not to leave one side of the shop and go to the other side of the shop and gather in groups.

Q. But if two men were working side by side, it was all right for them to talk about anything? A. I even let them use the telephone for their personal calls, and everything, there.

Q. And I think you stated that it was another of the many coincidences in this case that the men that were (711) fired were union men, is that true?

Mr. HUGHES: We object to that; and it seems to me that the first question was inadmissible, when the word "coincidence" calls for a conclusion, and I see no reason for repeating the error again.

Mr. CARMODY: The only time "coincidence" has been used has been by the witnesses testifying for the company here, and by the witness for the company, called by the Board. He may answer it if he knows. He himself used the word "coincidence."

Mr. BLUM: He said that.

Mr. HUGHES: We concede that, but it is a conclusion on his part.

Mr. CARMODY: He may be asked about his use of the word "coincidence."

(The question was read by the reporter.)

Mr. HUGHES: That is entirely inadmissible, and he

hasn't testified as to the many coincidences, and he hasn't said a word about that.

Mr. BLUM: I will withdraw the question. I think that is all.

RE-DIRECT EXAMINATION.

By Mr. LYNCH:

Q. May I ask him one or two questions, and then I (712) will *I will* be through. Mr. Wilsey, if two men were working on the same side of a car or the front end of a car together, and one of them would say, "I saw Jean Harlow in Riff-raff last night, and it was a lousy picture"—that is all right, isn't it? A. Certainly.

Q. I want to get just one thing—can you get those right after lunch recess? A. You want the pay roll?

Mr. CARMODY: We will recess now until 2:30.

(Whereupon, at 12:30 o'clock p. m., a recess was taken until 2:30 o'clock p. m. of the same day.)

AFTER RECESS.

(The hearing reconvened at 2:30 o'clock p. m.)

MR. GEORGE F. WILSEY the witness on the stand at the hour of adjournment, resumed the stand, and was further examined and testified as follows:

RE-DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. Wilsey, did you have any extra men on during January or February, for chains? A. Yes, sir. I had four. I had four men.

Q. Were they in addition to the regular men that (713) cleaned the buses? A. Yes.

RE-CROSS EXAMINATION.

By Mr. BLUM:

Q. Who were these four men during January and

February? A. I am just getting their names here; a man named Johnson—

Q. Is he still in your employ? A. I hired him back, yes, sir. Johnson, McCaulley—that name is M-c-C-A-U-L-L-E-Y.

Q. Is that one of the men fired? A. Yes. I hired him as a laborer at that time. Then Van Patten.

Q. Is he still working? A. No, he was extra; and then DeGrange.

Q. Is he still working for the company? A. No, he was just a laborer.

Q. Now, did you get those records you were requested to bring before recess? A. Mr. England has them.

Mr. BLUM: May I see those records, please?

(The papers were handed to Mr. Blum.)

By Mr. BLUM:

Q. I notice at the top of these records it is marked "Weekly time sheet" and where did this come from, if you know? A. I don't know.

(714) Q. Did you make any entries on this time sheet? A. No.

Q. Who makes these entries? A. I don't know who makes them.

Q. Then, how will you be able to tell from these sheets who you employed and when you employed them? A. By getting their time cards.

Q. Now, are they the time cards you referred to prior to recess? A. That is the pay roll.

Q. Well, prior to recess, weren't you requested to bring your time cards so that you could give that particular testimony? A. It was the pay roll.

Q. Wasn't it for the purpose of having you tell when you last employed men in order to complete the organization? A. You asked for the pay roll and that is the pay roll.

Q. So you just merely brought the pay roll in? A. That is right.

Q. And you can't tell us now even after recess whether or not you finished your organization of men to

take the place of these men, three days after they were dismissed? A. The dates are on that pay roll.

Q. Well, I will hand this to you. Can you tell from these sheets when you completed your organization? A. (715) These are the men on this list here, on these dates.

Mr. LYNCH: Read the top part.

The WITNESS: "Weekly time sheet, for the week ending March 6th, 1936."

Mr. BLUM: Go ahead.

The WITNESS: "Johnson."

Mr. LYNCH: Are these new men put on?

The WITNESS: Yes.

By Mr. BLUM:

Q. What date does that indicate they were put on? A. March 6th, the week ending March 6th.

Q. What about the days there, does anything indicate the days on there? A. Yes, Saturday.

Q. What are those first marks up there? A. Friday, Tuesday, Wednesday; and they start from the other side.

Q. What date did he go to work? What do those marks indicate, the straight lines, and the "X" marks, do you know? A. That is a day off.

Q. What indicates the day he goes on? A. I have never seen this pay roll before, and I don't know what method they use.

Q. And you will not be able to tell from that chart (716) when you find your pay roll? A. Not less I ask Mr. England.

Q. You were asked to bring that information.

Mr. LYNCH: I have a man here that can read those things for you in a minute, and if you want all of the records we will bring them, but if this record will suffice by a man that keeps them, we will put him on the stand; if you want the others, we will send over a special messengers to get them all up here.

Mr. HUGHES: Mr. England can testify about them.

By Mr. BLUM:

Q. When you came in here before you went on the stand you and Mr. England sat over by the telephone there and went over these two sheets, did you not? A. Half a minute or so.

Q. And both of you, or one of you, put little check marks after the names of certain people there? A. I didn't see that.

Q. You saw me sitting over here watching you, didn't you? That is what I am trying to find out, what those check marks are there. A. I didn't notice that.

Q. Did you see—you didn't do it? A. No.

Q. Didn't you see Mr. England sitting there doing it? A. No, sir, I didn't notice that.

(717) Q. You don't know what the purposes of those check marks are? A. No.

Q. I am not imputing any false motives, I want to know why, that is all. I saw them do it. A. I remember that he was asking me for the day crew and the night crew.

Q. What do those checks indicate? A. Night crew and day crew.

Q. All of the check marks are the same, aren't they? These check marks right here? A. That is the night crew.

Q. Those that are marked are the night crew, and those unmarked are the day crew? A. Yes. I didn't understand. I thought you meant these little spots in here.

Q. No. A. I beg your pardon.

Q. Now, does this mean your present night crew? A. No, not the present night crew. There are eight men there, and I put two more men on, and I have had a crew of ten, and I have still got a crew of ten.

Q. But on this date, on March 6th, you merely had a time sheet on eight men, isn't that true? A. No; Tur-
(718) ner should be on there. Is his name on there?

Q. No, he is not. A. He might have been off sick.

Q. But on March 6th, so far as your pay roll is concerned, you had nine men? A. That is right.

Q. And some time after March 6th, you increased your roll to ten? A. I brought it back to ten.

Q. So that at the time the men were fired, you hadn't

completed the organization to take their places, had you?

Mr. LYNCH: What do you mean by "organization"? Do you mean the full quota?

Mr. BLUM: Do you want his words on direct examination?

Mr. LYNCH: I want you to say, when you say "completed his organization"—he said he had eight men there, and even before, and there is a question of whether that is the organization, or a necessary part of the organization.

Mr. BLUM: On that objection, the witness' own statement on direct examination was that he was building up an organization for the purpose of taking the place of these men, and he was in the process of that.

Mr. LYNCH: That still doesn't answer that.

Just a minute, will you please, sir,—then you say that he has eight men on this date, and indicate he may (719) have had ten heretofore, and you say that he hadn't completed his organization.

He hasn't said that eight men wasn't a complete organization, and it may not have been a full quota, but it may have been a complete organization.

By Mr. BLUM:

Q. You testified that your full crew was ten men? A. On that shift.

Q. On that night shift? A. Yes.

Q. On March 6th you only had eight; isn't that true? A. I would have to check those records.

Q. Check them. You have them here. You only marked eight men. Mr. England marked them here in your presence, didn't he? A. There were eight men.

Q. And your full crew is ten? A. I was trying to add two more men in there.

Q. Now, when you discharged Mr. Atwell, did he ask you why he was discharged? A. No, he never said a word.

Q. He never said a word? A. No.

Q. How long had he been with the company? A. July, 1929.

(720) Q. July, 1929—nearly seven years—is that true? A. That is right.

Q. Had his work always been satisfactory up to the time he was fired? A. No, in spots—there have been spots that developed.

Q. What sort of spots? A. I haven't got a complete record of everything that had ever taken place.

Q. You knew why you were firing him at the time you did? A. Yes.

Q. Why did you fire him at the time that you did? For what reason? A. Well, there were cases there—pilot bearings and clutch bearings burning out, and greasing was bad, and grease gun was broken up, and fittings all over the place.

Q. How often did that happen? A. It seemed to stay with us.

Q. What is that? A. It was always present.

Q. It is always present? A. These broken hoses, and gun always out of order, and stuff like that.

Q. Is that all attributable to Mr. Atwell? A. No, part of it can be.

(721) Q. Well, I am asking you at the particular time that you fired him, what reason did you have in your mind for doing it? .I don't think he answered that question. A. I should think that answer would be enough.

Q. Would you mind answering the question? A. I have answered it.

Q. Would you mind answering it, please?

Mr. LYNCH: He answered it.

Mr. CARMODY: He hasn't answered the question.

The WITNESS: Burned out pilot bearings, and clutch bearings.

Q. Was that all that you have there attributable to Mr. Atwell? A. He was responsible for that greasing at night.

Q. I see. A. He has a grease record there that will show the jobs that went bad.

Q. For how long a period of time did this exist? A. That keeps on coming up at intervals.

Q. All seven years that he was employed? A. He was there six years.

Q. All six years that he was employed? A. Well, as long as he had been doing greasing he has had difficulties there.

Q. And all during that six years he was under your (722) supervision, was he not? A. I explained to you that he is on a night crew, and Joe Harmon is the night foreman, and he worked under his supervision.

Q. How did you get this statement, and from whom did you get this statement that he was responsible? A. We have a greasing chart which shows that condition on and off, and we check them up.

Q. Do you study those charts? A. I look at them.

Q. Have you studied them for the past six and a half years that he has been in your employ? A. We have always had greasing charts, and they are always under my supervision.

Q. Have you studied them for the past six and a half years? A. Yes.

Q. Did you find— A. This condition has been a reputation. One time after another it has come up.

Q. And it was only six and a half years later that you fired him? A. We were hoping for the best.

Mr. LYNCH: The question is argumentative.

Mr. BLUM: I will withdraw the question.

(723) By Mr. BLUM:

Q. Now, when you told him to get his money, he didn't say anything to you? A. Just walked around and got it.

Q. Did you say anything to him about why he was fired? A. No.

Q. When Mr. P. Frederick was fired, what was the record against him? A. Well, the last two or three months he was becoming kind of dominant, and would react against any orders more or less.

Q. What do you mean, more or less? A. Well, a couple of times there I said, "Well, boy you have been in there long enough. Why don't you buy a pair of plyers?" And he has never bought a five cent tool, "and you are going to be a mechanic soon; why don't you do something for yourself, at least buy a pair of plyers." And he would come back with a sarcastic answer, "You don't pay enough money to buy tools, and why

don't you pay enough wages?" And that is not proper, and I even made the same remark to his brother, which is the other Frederick, that "the boy is feeling his oats."

Q. When was the last time that he was that insolent to you? A. Three or four weeks ago, I should say. (724) Q. What was that insolence over, the question of plyers again? A. Something about tools.

Q. For how long a period of time has this been going on, the bickering between you and him? A. That one little thing has just been lately that he showed up those traits, and he has always been very mild.

Q. Was that only in the last several weeks, before he was fired? A. About five weeks ago that remark was made to me, and I let it pass off.

Q. And how long has he been in your employ? A. November 30th.

Q. What year? A. 1930.

Q. Nearly six years. A. That is right.

Q. And in six years he only showed some insolence about three weeks ago? A. Do you want more?

Q. We want it. A. All right. The boy reached his capacity, his mechanical capacity, say, the first year he was there. I had taken him off the wash rack from the night crew and brought him on day crew and I had to use a lot of pressure even to bring him off that crew to (725) the day crew, which I can prove by his brother, and he refused the first time, and we put him in the shop to bring him up to where he would be a mechanic, or a more skilled type of *labor*, and he reacted against that, and I kept on after him, and after a while he got to a position where he would come on the day shift, but he didn't like that at first, and I didn't ask him whether he liked it better or not, but he shows no mechanical improvement, and I can go back a little bit, say, seven weeks ago, and I put him on a spring job in the shop, and he so tangled and tied up with the job all day that I just got disgusted with it and I balled him out personally, and I said,

"Boy, you will never be anything but just a grease ball."

Q. That was seven weeks ago? A. Seven weeks ago, maybe shorter than that.

Mr. HUGHES: Would you mind asking him what he means by "seven weeks ago"?

The WITNESS: Just about seven weeks ago from today.

By Mr. BLUM:

Q. Why was it that you had an argument five weeks ago, about tools, because you wanted him to improve his position as a mechanic, five weeks ago? A. For just that reason.

Q. But didn't you make up your mind seven weeks (726) ago that he would never improve; isn't that what you told us? A. Sometimes, you know, there is a case where there are sentimental reasons attached to things, and I know that they shouldn't come into business, and I realize that, but now that was one of those things.

Q. Now, did you have sentimental feelings about all of these men? A. No, some of them were just tools to be used, and some of them were different. I always admire a man that has initiative, and I always admire a man that will stand out and work and try to do better. Not to change the subject, but that is why I brought this boy Dameron, who came to me personally, and he was interested in going on day crew, so he could go to night school, and I said, "Boy, you don't have to ask me a second time. You are right on it." That is the way I do things.

Q. When did you put Dameron on day duty? A. I would have to go back over the pay roll to check on that. I haven't got that.

Q. Didn't you testify before recess that you put Dameron on night duty when you fired these men? A. I believe I did.

Q. Why did you put him on night duty? A. He was familiar with that work, with that crew, after being on (727) there, well, from 1934, and he knew the crew, where to take buses and runs, and things like that.

Q. And you moved them from the day duty to night duty after these men were fired, is that true? A. I would have to check the pay roll to be sure on that. I would have to check the time cards to be sure. I am saying these days with twenty-four men here, I haven't got records to state that everything is exact, and I would have to have the records.

Q. What are those things that you are testifying from? A. This is a little index that I have.

Q. When did you make that record? A. I have had

that here for a few days, on different crews and shifts, and notations.

Q. When did you put those reasons that you had on there for firing these particular men whom I ask you about? A. Well, I have had these things in mind for years.

Q. You carried them in your mind? A. Yes.

Q. And from your mind you transposed them to your papers several days ago? A. I am telling the truth to you.

Q. Answer my question. A. I am answering your question.

Q. You carried that in your mind for a long period
(728) of time? A. Yes.

Q. And just a few days ago you transposed it to these papers? A. Yes.

Q. And you have the individual men that were fired on that list? A. Yes.

Q. And beside each name you have a reason for your firing him? A. Some. Would you like to see it?

Q. Yes, I would like to see it.

You have after the name of that one man, that he was not needed. A. That is an abbreviation for myself, and if you give it to me—

Q. Not neat. A. I will have to see what you are referring to.

Q. You have stall, lazy and not neat." What do you mean? A. His workmanship.

Q. What type of work does he do? A. That is a body man, and his name was McDonald, H. McDonald, and I have down here, "stall, lazy and not neat" and that is what is down here.

(729) Q. You mean not neat? A. In his workmanship.

Q. What type of work is he supposed to do? A. Body man.

Q. What type of work does he do as a body man? A. He puts on body panels, and woodwork.

Q. How does neatness enter into that type of work? A. He is supposed to maintain a nice, neat appearance in a bus.

Q. Does he do the painting after he does the body work? A. Well, the panels should be smooth, and the molding should be smooth and straight, and the welding should be smoothed down, and the woodwork must be

put in so it has a nice, neat appearance, and there shouldn't be any slivers.

Q. How long has he been with the company? A. March 21, 1935.

Q. March, 1935? A. Yes.

Q. Nearly a year. A. Just about a year.

Q. And all of that period of time was his work of the same nature? A. He was taking the same position as an apprentice with me, and I was coaching him and instructing him, and it was a constant case of explaining and telling him just how to do his work, and make him (730) put back the welding torch, and stuff like that, and when work time came there would be a mess all around him, and he was just going to clean up all of the time.

Q. You say that you carried those things in your mind, about these men, and you wrote them down a few days ago, is that true? A. Yes.

Q. You didn't write it about all of the employees under your supervision, did you? Just about these men that were fired; isn't that true? A. I could write something on all of them.

Q. I am not questioning that. A. Yes.

Q. You just made that chart about the men that were fired? A. No, sir.

Q. And you have no chart on the men retained in the employ? A. That is not necessary; I have it, but not on here.

Q. Do you have anywhere? On any papers? A. Well, I haven't got it down here, but I am just taking these.

Q. When you noticed that any man was doing his work particularly bad, did you make a notation of it any place? A. Not on paper.

(731) Q. You did not; but made a mental note? A. Yes, sir.

Q. You have a lot of men coming and going throughout the entire year, don't you? A. Yes.

Q. And you recall the indiosyncracies of the men discharged a long time ago, too? A. Yes, when I met them again, and I can go over it again.

Mr. BLUM: I think that is all, Mr. Wilsey.

REDIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. Wilsey, will you look at these papers that you have there, and if there are any that you haven't told us in detail about, other than Mr. Blum asked you, would you kindly state it for the record? I don't want you to repeat what you told to him, but you told about Mr. McDonald, and you told about Mr. Atwell; will you tell us about the others that you didn't tell to Mr. Blum? A. Do you want them all individually? *A.* That you haven't told before.

Mr. BLUM: Do you think that you can do it from memory?

Mr. LYNCH: He has.

Mr. CARMODY: You may use it, and the same guide (732) should be used as the other one.

By Mr. LYNCH:

Q. Go ahead, Mr. Wilsey. A. Take Mr. McCaulley; and if you notice on the record of February 11th, 1935, I brought the man in as a laborer on chains, repairing, and I had him changing chains during that cold spell, along about February, when we had all of that snow and ice, and he seemed to change chains pretty good until I brought him in the shop and I talked with the foreman, the night foreman, and he said that he was a very poor mechanic, and I said, "Well, I will get rid of him and see if I can pick you up another man."

Mr. BLUM: Will you give us the date of when that happened?

The WITNESS: Right close to the 1st of March.

Mr. LYNCH: Take the next one.

Mr. BLUM: Do you recall whether it was after the ad appeared in the paper or before?

The WITNESS: That was before that time.

Mr. BLUM: Away before that?

The WITNESS: I should say, to be exact, about that one, Harmon told me about that; I guess it was around February 25th, or 26th, but he started the 11th, and it was right after that that he told me, and he told me he (733) wasn't much of a mechanic. So I never questioned that, and I always let that ride through.

By Mr. BLUM:

Q. That was some time near the 11th of February? A. Yes, right close by then.

Q. And you carried him for three weeks later, before you fired him. That is true, too, isn't it? A. I said I didn't know the date that Joe told me that, and I don't know the date.

Q. It was some time near the time when he was employed? A. Yes.

Q. And you carried him for several weeks? A. Yes.

Q. Before you fired him? A. Yes.

The WITNESS: R. F. Smith, gas and oil.

By Mr. LYNCH:

Q. What does that mean? A. He gassed and oiled the buses.

Q. Any comment on him? A. The bus went out of gas, a couple of times, but I could give you the date on that.

Q. Who else? A. During the day, buses would come in after they make the run in the morning, and we find gas caps off, and oil all over the fenders, and all down (734) the sides of the hood, and oil filter caps missing, and gas caps off, and you have to buy those things by the dozen, and some of them are fastened with chains, and they seem to be loose.

I brought that up plenty of times.

The cleaners, you take Moore, Garrison—well, we have had dirty buses, as the reports have come in, and Dove spent some time helping clean, and he has been in the cleaning gang, and helping out with tires, too.

There ere dirty buses, and tops not cleaned, and I have told the foreman about that plenty of times, to clean the tops of them off, particularly the streamlined jobs, because there is dust all over the tops, and you can reach

up there with a brush and get them, and get them clean, and sometimes he wouldn't get them.

Bealle, D. W. Bealle, I brought that man in more than anything else to help out on the light work that would come in, and we had automobiles, and stuff like that, and we had a Ford in there.

He was a mechanic, and came to work for us in January of 1936, and I knew the boy quite a while, and there was no heavy duty experience, and is a very slow worker, and he put a clutch in a job and we took it out next day, and he was a hard man to keep on work, and he had some outside difficulty there that he would work one day, that he started to take a motor out *w*one morning, and (735) he was out one afternoon, and he was kind of a hard man to keep on a job.

I was commencing to get tired of the man, and he was a nice fellow, but it wasn't business.

The company stood the cost of the clutch job.

George Birch—a mechanic.

Birch was coming along pretty good, but he was a boy that paid very little attention to anything that was going to help him, and he had just got to a position the last two or three months that while I was after him all of the time, about the way he was doing his work, and it was becoming regular, and we had to watch him very closely, and he would destroy almost as much as he would make, and I had some talks with him and tried to help him, and I talked to him during the times of work, and he—I said, "George, you have to get yourself together, and you are becoming a young man, and you ought to be in the position where you ought to be on top, and he should be on the top, and he seemed to react, and gave me a smart smile, and I felt tough about him coming along, as long as that, that he wouldn't improve himself.

I remember one case there we had three water pumps —but you are not interested in mechanics—we had three water pumps we had difficulty with before we got one to fit.

Mr. CARMODY: What was his hourly rate of pay, do (736) you remember?

The WITNESS: We paid him $27.50 a week.

By Mr. CARMODY:

Q. How much is that an hour? A. We paid them straight through.

Q. They were not paid when they were off a day? A. No.

Q. So that their wages were calculated on an hourly basis, weren't they? A. I presume so; we paid them by the week straight through.

Q. You paid them $27.50, whether they were there three days or four days? A. We took that time off.

Q. $27.50 for seven days? A. They worked thirteen days and one day off, and every 14th day of their run they went off.

Q. How much did they get for that 14-day run? A. What do you mean?

Q. How much did he get for 13 days? A. He would get $55.00.

Q. Or $27 for 13 days. Now that is at the rate of $27.50 a week, but he had to work 13 days to get it, so that for six and a half days, then, he got $27.50. A. That is right.

(737) Q. How many hours a day? A. Nine hours.

Q. Nine hours a day? A. Yes.

Q. 13 times 9—that was nine working hours? A. Yes.

Q. That is 117 hours; is that right, for $55 how much is that an hour? I can't do it in my mind. A. That is about 50 cents an hour, yes.

Q. You said that we are not interested in mechanics, and you had three water pumps there; what had to be done with those water pumps? A. Installation only. We never overhauled them. The only thing that they are responsible for in installation is when you mount your pump there is a driver that comes over the timing case, and there was a sprocket, and you mount the sprocket on the water pump, and when you mount your pump you are supposed to have a certain distance between the two sprockets so that one won't bind the other.

Q. What was the best hourly rate you paid any mechanic you had in the shop? A. Harmon got $36 a week.

Q. And he is the foreman? A. Yes.

Q. What was the next top rate for a mechanic? A.

(738) Frederick, $35.00.

Q. And they were foremen; and what was the next for a mechanic; and I am thinking of some of these boys who weren't coming along. What were they getting, these boys who were so discouraging in their mechanical work? A. There was Miller; he got $30.00.

Q. What is the matter with Miller? A. Well, the foreman reported to me a couple of times that he wasn't much of a mechanic, and he wanted a better man.

Q. Was he a night man? A. Yes; and he said he was getting along all right.

Q. Did you ever work with him, to see whether he was or not? A. Yes, I had him on day time.

Q. How did he appear to you? A. He seemed to be a kind of an intelligent sort of a man, but as I told Joe when I put him on at night, "Maybe you can make a pretty good man out of him".

Q. You were a working mechanic? A. I overhauled all of the units.

Q. So that in addition to being superintendent, you really do mechanical work? A. Oh, yes, I do all of the electrical work.

(739) Q. And the machine work too? A. Most of that, yes.

Q. What machines do you have? A. Valve refacers, valve setting tools, electrical test bench, analyzers, condenser testers, gas analyzers, welding equipment.

Q. Grinding equipment? A. Yes, a couple of grinders.

Q. Drill presses? A. We got an electric drill.

Q. Lathes? A. We had one lathe, but we got rid of it.

Q. But you need a lathe in your business? A. Yes.

Q. In other words, you run a machine shop there, an electrical shop. Our own electrical shop.

Q. This isn't all greasing, but there is a lot of mechanical work? A. Yes.

Q. It takes a good mechanic? A. Yes.

Q. And you can't use any inexperienced mechanics around a place of that kind to do the actual mechanical installation work, can you? A. Well, installations de-

(740) mand good horse sense, and demand care.

Q. And some mechanical experience? A. Yes, that is right.

Q. You have threading of pipe to do? A. Sometimes.

Q. You have air brakes to repair? A. Yes.

By Mr. BLUM:

Q. This man Dameron is—that you said is such a marvelous up and coming man, what was his salary? A. We were paying him $15 a week.

Mr. CARMODY: That is for half of 107 hours?

The WITNESS: Yes.

Mr. HUGHES: How many hours did he work?

The WITNESS: Well—

By Mr. BLUM:

Q. Was that during the day or night; didn't he work 11 hours during the day? A. He was working 11 hours up to the time I put him on days.

Mr. CARMODY: He was working 11 hours a night?

The WITNESS: Yes.

By Mr. CARMODY:

Q. How many nights a week? A. The same rate, 13 days.

(741) Q. Well, that is different. That is 143 hours a week, for $30.00, or twice 15; that is about 29 cents an hour. Now, he was the mechanic that took the place of these other men? A. He was a cleaner. I got him in the shop now as a helper, working him in the shop as a helper.

By Mr. BLUM:

Q. Was his pay increased? A. Not yet.

By Mr. CARMODY:

Q. Whose place did he take? A. I haven't got whose place he has taken on here.

Q. You don't have to refer to that; you are in the shop; don't you remember? You did this placing yourself. A. Certainly; but you said "replace". I put him on the shift.

Q. Whose place did he take? A. That is what I am talking about.

Q. Can't you find out? I don't care how you find out. Whose place did he take? You can look at your record, where you placed the men. A. I put him in the place of Frederick.

Q. Which Frederick? A. P. Frederick.

(742) Q. He is the man that wouldn't buy the plyers? A. Yes.

Q. Has Dameron bought plyers? A. I haven't got into that yet.

Q. Did you know when you put him on, did you know whether he had plyers? A. I don't know.

By Mr. BLUM:

Q. Dameron took a cut when he went on the day shift, didn't he? A. No, his pay was the same.

Q. Did he ever get less than $15 a week? A. No.

Q. Why is his pay right back where it was? What do you mean by that? A. Right back where it was?

Q. Yes. A. You asked me that.

Q. Was it ever changed? A. I was going to change it, but I let it go as it was.

Q. What was the change that you contemplated, a decrease? A. Yes.

Mr. BLUM: I think that is all, Mr. Wilsey.

By Mr. LYNCH:

(743) Q. Mr. Wilsey, the cards that were put in there two or three months ago, four or five months ago, relative to road calls, and service calls, was the mechanic that went out on those calls and the foreman supposed to sign them? A. Yes. They are there. There is one already filled up, and I kept it on the board, just how it is supposed to be.

Mr. CARMODY: You mean a sample?

The WITNESS: Yes. That is still on the board. I had the time cards, and all of that, all typewritten up for them, just how they were supposed to fill them out.

Mr. LYNCH: How about Roy Miller; have you said

anything about Roy Miller? If you have already testified about him, there is no need of repeating it.

Mr. HUGHES: Have you mentioned his name so far?

Mr. LYNCH: Just say yes or no.

The WITNESS: I explained that.

Mr. LYNCH: Have you mentioned Mr. Gildart? A. Yes. He is the painter.

By Mr. LYNCH:

Q. Did you tell about him or not? A. If you want me to.

Q. Have you already told about him? A. No.

(744) Q. Go ahead. A. Gildart, well, he is a slow man, and he is a kind of obstinate type, and he seems to resist following orders.

Q. Did you ever give him orders? A. Yes.

Q. Wasn't he under the direction of Mr. Harmon like the rest of the men? A. He is on the day crew, and the painter.

Q. Was he under the supervision of Mr. Frederick? A. No. I generally handle that paint work myself. I generally handle that myself. I had one bus in the shop here on that.

By Mr. BLUM:

Q. What was P. Frederick getting at the time he was fired?

Mr. HUGHES: We have listened to these questions about the wages of these men, and I have been just wondering what the relevancy of them is. Now, I am aware of the fact that this complaint can be amended at any time, and if it is the purpose of the prosecution or even of the Board to proceed on any theory of any unfair labor practice connected with the pay or wages, I think that we ought to know about it in order to answer it, or has the Board any jurisdiction over that?

Mr. CARMODY: The Board has no jurisdiction over the wages paid at all. My interest in this wage business, my curiosity, was aroused through Mr. Wilsey's reason

(745) for letting these men go, and this discussion about the mechanical work, and the character of work, and the kind of work that the men had been doing, and the apparent ability or lack of training of the men whom he put in their places, that is all.

He is supposed to have gotten together a crew of men who are more efficient and skilled in this garage work than the men that he had, and had had for several years under his immediate supervision, and I just wondered how the thing was organized.

By Mr. BLUM:

Q. What did P. Frederick get at the time he was fired? A. His pay was $18.00.

Q. And this fellow Dameron on $15.00 replaced him? A. Yes.

By Mr. HUGHES:

Q. There is such a thing as getting stale on the job, isn't there, Mr. Wilsey? In your experience, isn't there such a thing as an employee getting stale on the job? A. Yes, it can become slowed up.

Q. You have been there nine years, haven't you, Mr. Wilsey? A. Yes.

Q. Have you slowed up? A. Personally, I can't slow up.

(746) Q. It is a characteristic of your make-up, isn't it? A. Yes, I tried to keep going.

Q. And you don't know whether that is characteristic of the make-up of these other men, or not, do you? A. Yes, I presume it is. Some people go ahead and some won't.

Mr. HUGHES: That is all.

Mr. LYNCH: I have a couple of questions to ask of Mr. England. We offer in evidence these sheets here, of these members here.

Mr. BLUM: No objection. We were requested to introduce them yesterday and we complied with the request.

Mr. CARMODY: What is this?

Mr. LYNCH: The men on the roster of the union.

Mr. BLUM: That is introduced with the consent of the representatives of the union.

Mr. LYNCH: I don't suppose they control the hearing.

Mr. CARMODY: It is a very unusual thing to put these in. What is the purpose of these?

Mr. LYNCH: We want to show the men who are still employed there.

Mr. CARMODY: Admitted.

(The document referred to was received in evidence, and marked "Board Exhibit No. 9.")

Mr. LYNCH: Can you give us the names of the men (747) that are still there, Mr. England

Whereupon HAMMOND H. ENGLAND was recalled as a witness on behalf of the Respondent, and having been previously duly sworn, was examined and testified as follows:

RE-DIRECT EXAMINATION.

By Mr. LYNCH:

Can you give us the names of the men that are still there, Mr. England? A. Mr. Baxter, Mr. Harris, Mr. Newman,—

(Mr. Lynch conferred with the witness.)

Mr. BLUM: Just a moment, please, that is certainly improper, for him to give instructions.

Mr. CARMODY: He just told him to leave off the word "mister."

The WITNESS: Reynolds, Snoots, Van Sise, Smith—we had two Smiths there.

Mr. CARMODY: Which Smith is there, left?

The WITNESS: I will have to wait until I get to the next one:

Lochart, C. C. Armentrout, Dinkle, Densmore, Philpott, Dameron, Heishman,—

That Smith that I mentioned previously is R. T. Smith.

Mr. CARMODY: There is only one Smith whose ini-
(748) tials are R. T.

The WITNESS: Yes.

Clayborne, Devers, Grabill, G. W. Samples, Milstead, Walton, E. W. Miller, R. R. Samples, Bradley, Hancock, Hanback, Byrnes, Turner, Hiner, Kadel, Gillott, Johnson, and Havenner.

I have one correction to make—instead of that R. T. Smith, it is E. I. Smith.

Stokely, N. W. Armentrout, Beery, L. B. Amentrout, Eckert, Hartman.

That is all on these records.

By Mr. LYNCH:

Q. Mr. England, I show you a copy of a letter that was called for by the counsel for the Regional Director, and ask you if you received that letter in this envelope? A. I did, yes.

Q. Referring to Board Exhibit 10-A, that came in Board Exhibit 10B. A. Yes, sir.

Q. And on the front of this envelope appears the words in pencil "First Del. 3/7/36" apparently indicating the first delivery. You didn't write that on there? A. I did not.

Q. Do you know who did write it? A. I do not.

(749) Q. Do you know whether the mail man wrote that in your presence or not? A. No, sir, I do not.

Q. Do you know whether it was on there when you received it? A. It was, yes, sir.

Q. All right. And was it received on the 7th? A. Yes, sir.

Q. Refer to Board Exhibit 10-B, the official post office stamp, Washington, D. C., March 5, 1936, and the

other is March 6, 1936, and March 7, 1936, Clarendon, March 7, 1936 stamped on here; and I don't see anything at the bottom of the stamp—it is blurred—but I presume it is Clarendon, Virginia, and the letter is dated March 3d.

Now Mr. England, see if you can help the Board on these papers here.

MR. CARMODY: The letter and the envelope are received as Board's Exhibits.

(The documents referred to were thereupon received in evidence, the letter as Board's Exhibit 10-A, and the envelope as Board's Exhibit 10-B.)

Mr. LYNCH: What are the checks, and what do the straight lines mean?

The WITNESS: The checks mean that a man does not (750) work on that day, and the straight lines are the days worked.

By Mr. LYNCH:

Q. Can you go to the new men taken on, in Mr. Wilsey's shop, which indicates the days that they came on? A. This pay roll is ending March 6, 1936.

By Mr. CARMODY:

Q. When did it begin? A. Our first day of the week is on a Saturday. That would be February 29th, which would be the first day. Do you want me to mention the man's name?

By Mr. LYNCH:

Q. Yes. A. Mr. Johnson was put to work on Monday, March 2, and worked through the entire week ending Friday, March 6th.

Mr. BLUM: You didn't employ him, did you, Mr. England? A. I didn't employ him; I didn't hire him.

Q. No, sir; you are just taking that from the record that you have? A. Yes.

By Mr. LYNCH:

Q. They are the official pay roll records, aren't they? A. Yes, sir.

Mr. Boomer started work on Tuesday, that would be March 3, and Mr. Williams began work on Tuesday, March 3.

Mr. German began work on Thursday, March 5th.

(751) Mr. Petit began work on Thursday, March 5, and Mr. Beall began work on Thursday, March 5.

Mr. Wiggelsworth began work on Friday, March 7.

Mr. Taylor began work on Thursday, March 5.

Mr. Rice began work on Friday, March 6th.

Mr. Costello began work on Friday, March 6th.

Mr. Brown began work on Thursday, March 5th.

Mr. Edwards began work on Friday, March 6th.

Mr. Jones began work on Friday, March 6th.

Mr. Jones began work on Friday, March 6th.

Mr. McClair worked Thursday, March 5th.

Mr. Isler worked on Thursday, March 5th.

(Thereupon there ensued discussion off the record.)

Mr. HUGHES: Has Mr. Lynch completed his examination, do you know?

Mr. CARMODY: I think he has.

Mr. HUGHES: We had better wait. It will only be a minute.

Mr. LYNCH: I am through with Mr. England.

RECROSS EXAMINATION.

By Mr. BLUM:

Q. Who receives the mail at the office? A. Who receives the mail at the office?

Q. Yes. A. The mail is brought to the cage where we have it at the door there, and I often receive it, and

(752) Mr. Kaylor often receives it.

Q. Does anybody in the office besides yourself have authority to accept registered letters? A. To accept registered letters?

Q. Yes. A. I wouldn't say that we have, no.

Q. Now, if a registered letter came to your office,

and you weren't there, would anybody else sign for it and accept it? A. We haven't had that occasion, so I can't say, no.

Q. We refer to four postmarks on here, two of them dated March 5th, indicating that it had been mailed on that day in the post office, and it is a post office stamp, and then we have Clarendon, Virginia, March 6th. Now, was a letter delivered to your office on that date and refused? A. Not to me.

Q. Do you know whether it came to your office and was refused by somebody? A. Whether it came to?

Q. Yes. A. No.

Q. Did anybody tell you about a registered mail on that day? A. Yes, but I didn't know what it was.

(753) Q. But you were informed that a registered letter had come and refused to accept it? A. I don't know what they told me.

Q. You were told?

Mr. HUGHES: Wait a minute. You used the word "refused to accept."

What do you mean, that he refused or the company refused to accept it?

By Mr. BLUM:

Q. Were you informed on any day by anybody in the office that a registered letter had come addressed to Mr. Leon Arnold and somebody in the office had refused to accept it? A. Yes.

Q. You were told that? A. Yes.

Q. And the next day after that you received this registered letter? A. Yes.

Q. Is that true? A. Yes.

Q. Now, who was the person in the office that told you that the registered letter had come but they had refused to accept it? A. I think it was Mr. Kaylor.

(754) Q Mr. Kaylor? A. Yes.

Q. Now, at this time, on March 6th, you had already fired some of the men, had you not? A. On March 6th?

Q. Yes. A. We had fired all of them.

Q. And Mr. Kaylor knew that, didn't he? A. I couldn't answer that.

Mr. BLUM: That is all.

Mr. LYNCH: Mr. Arnold, will you step around?

Whereupon LEON ARNOLD was recalled as a witness on behalf of the Respondent, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. Arnold, do you remember an occasion some time the latter part of February, the first part of March, in the neighborhood, when you had an occasion to meet Mr. Wilsey, and Mr. Harmon, or see them on the road, somewhere near the garage, and you stopped the car? Do you remember that incident? A. Yes.

(755) Q. Are you able to give us the date? A. I can't give you the date; it was around the date you just mentioned.

Q. Did you ever tell Mr. Harmon or Mr. Wilsey that you would not recognize the union and they could put it in their pipe and smoke it? A. No, sir.

Q. Did you ever tell them that you would burn their buses? A. I positively did not.

Mr. BLUM: I object to that. There was a statement that Mr. Wilsey had said that Mr. Arnold would do it. That is the testimony in the case.

By Mr. LYNCH:

Q. Did Mr. Wilsey ever make that statement in your presence? A. No.

Q. If anybody would burn the buses, you would be the one to do it? A. Yes.

Q. And you would be guilty of a felony in the State of Virginia? A. Yes.

Q. And I think—

Mr. CARMODY: Strike all of that out of the record.

(756) The WITNESS: I do know the law to that extent.

By Mr. LYNCH:

Q. You deny that you told Mr. Wilsey that you would burn the buses or made any such statement as that? A.

I never have made any such statement.

Q. And Mr. Wilsey never made any such statement in your presence, that you told him that? A. He has not.

Q. Where were you going on this occasion, or where were you coming from, when you stopped and happened to see these people? A. That was the night, to the best of my knowledge and belief, that there was a meeting held at Mr. Frederick's house, and I had left the office and drove around the garage and came out on the road running beside of our garage, and coming out below the garage.

Q. Yes. A. And Mr. Frederick's house lies to the north of that, and I saw quite a few of the men coming across there, and Mr. Wilsey, to the best of my recollection, and Mr. Harmon, were together. I couldn't say just why I stopped, whether I just stopped to say something to George or whether he asked me to stop, but I did stop, but when I did stop, I stopped quite a little ways beyond them, and Mr. Wilsey walked to my car door, (757) and Mr. Harmon was quite a ways back of the car, and when I was talking to Mr. Wilsey, and he asked me about something, and I said, "All right, just let it rest, and I am on my way home, and I would rather not talk about it tonight. It must have been around, to the best of my recollection, about one or two in the morning.

Q. Was there any discussion about the union at that time? A. Nothing was said that I know.

CROSS EXAMINATION.

By Mr. BLUM:

Q. Did you say to Mr. Wilsey at that time, "Things were different in my day, and when I was a boy I had to scuffle for a living"? A. I didn't stop long enough to say that much.

Q. You didn't hear Mr. Wilsey's testimony this morning? A. I did not.

Q. If I tell you that Mr. Wilsey testified to that, was he mistaken? A. No.

Mr. LYNCH: If everybody could remember everything said, it would be just too good.

Mr. BLUM: But he said he wasn't there long enough to say it.

Mr. LYNCH: You have a contradiction there.

Mr. BLUM: That is why I am following it up.

(758) Mr. CARMODY: It has been answered there sufficiently, and he wasn't there long enough to have said that much.

The other witness testified specifically what he said, and also said that he mumbled.

The WITNESS: I don't generally mumble.

By Mr. BLUM:

Q. Did you have a cigar in your mouth at the time? A. That is a customary condition, and I would have one there if it wouldn't be for that lawyer.

Q. Did you talk to Mr. Harmon there at all that evening? A. I did not.

Q. Is your home in that neighborhood? A. No, sir, Georgetown.

Q. Where did you say you were that evening? A. Where did I say I was?

Q Yes. A. I was at the garage office.

Q. At two o'clock in the morning? A. Yes, sir.

Q. Any particular reason, or is that a usual practice? A. It is not.

Q. Was there any particular reason for being there at two o'clock? A. There was.

(759) Q. Would you mind stating that? A. Yes. My reason for being there was this sir: With all of the things that were floating around, many of them that haven't been quoted here, and I didn't want to take too much time in quoting after the things that I could have quoted the other day, and the things that were said, which were being brought to me, and I was more or less looking after the interests of my business which I always do, and it doesn't make any difference how severe the occasion is, and that was my duty.

Q. Was it looking after the interests of your business in connection with the drivers or in connection with the mechanics? A. Neither in particular, but in general.

Q. I see. A. I don't think that there is anyone that

can say that I talked to them for the simple reason that I think that they were all in that meeting, and I couldn't have talked to them if I wanted to.

Q. You thought that it was easier to protect your business at 2:30 in the morning than it was during the day? A. At that time, why, there were many things to look and watch to see that they didn't happen, and from all of the things that I heard, and I am going to relate you some of them a little later, to show that there was (760) cause for me being there at most any time, where I could not devote all of my time there during the day on account of other interests, and I devoted the major part that I could spare from my other interests.

Q. I see. Now, the last of these men, as I understand it, was fired on March 6th. Now, on March 7th, did you have a conference with Mr. Schauffler and Mr. Lynch and yourself? A. I did.

Q. Now, what was the nature of that conference? A. The nature of that conference?

Mr. LYNCH: That isn't relevant here. Any conferences between parties, I submit, certainly isn't competent for a subsequent hearing. If people can't confer about matters, certainly any conference between lawyers or defendants can never be brought out, and if it were the people would never confer about matters.

Mr. CARMODY: May I say a word on that here?

The Board has consistently taken the position—in response to the statement that Mr. Lynch, the counsel for the Respondent has made—I want the record to show that the Board has consistently taken the position that it does not wish to put its directors, or its attorneys, on the stand to reveal confidential conversations that have (761) been had with employers, or with employees, when they have been endeavoring to work out a settlement of a dispute, and unless the testimony is absolutely essential to this case, the Examiner would prefer not to see it introduced.

One of the functions of this Board is to undertake to bring about better understandings between employers and employees who have a dispute about recognition or about some other question that comes under the Act.

The Board, fortunately, through its various regional offices, has been successful in negotiating a great many

settlements without the trouble of going to formal hearing, and frequently settlements that were satisfactory to both parties have been worked out, even after the hearing was held, and before any decision was rendered, and the Board wants to extend that practice, just as far as possible, so that anything that might be worked out as a result of confidential conversations between the parties with our own staff members present, ought not to be revealed.

We want employers to feel perfectly free to talk to our agents, and to our regional directors, and we want aggrieved union people or aggrieved employees, who are in the process of joining an organization, to talk confidentially, and then the Board will not reveal those confidences, and will use its good offices to bring about a better understanding, if it is possible, so that I shall (762) be glad to hear your comments, Mr. Attorney, but I am telling you what our position has been.

Mr. BLUM: No one respects the wishes more than myself, but one element of the defense which has been put forth in the answer, and which has come forth from the lips of the Respondent's witnesses, can only be refuted on the part of the Government's case; but one incident that occurred at this conference—I do not intend to go into the question of the conference, but I want to go into this particular incident, and it is the only evidence that there is to refute a particular point of the defense.

Mr. CARMODY: The objection to the question is sustained. We will not go into it.

If that is the only way that this case can be sustained, then the case must fall.

Mr. BLUM: I want to make myself clear, and it wasn't a question of the case, but it was one point of the defense.

By Mr. BLUM:

Q. Now, on the Saturday prior to the day that the first men were fired, if you recall that, were you in your office with your son at night? A. I was, and several others.

Q. And some of the drivers were in, were they not? A. Yes.

Q. On that evening, was any whiskey served to the drivers? A. There was.

(763) Q. Did you send any one of the other drivers out to get some champagne from your car? A. It did come up, and something in regard to champagne, and I asked the boys if they liked champagne or something, and nothing unusual about that particular incident, and he said yes, I would like it; and one of them said he had never tasted it, and I said that I have got a bottle in my car, and if you want it go out and get it.

Q. Was Joe Arnold there at the time? A. Yes.

Q. Did he taste any of that champagne? A. I don't think so.

Q. Did he see it there? A. I couldn't swear to that. I don't know whether he was in there at the time. He was in and out.

Q. Was that offered to the men, or did they walk over and take it themselves? A. I would say that our men have been like one big family in all of our organization.

Mr. LYNCH: Just tell about the incident.

The WITNESS: That incident, there were many of them that came in there that weren't invited, and there has been other instances when it was used when they weren't invited, and the bottle was on the table, and I know that some of them took it without being invited, (764) but I don't hesitate to tell you that if it was off duty, and it wouldn't interfere with their duty or driving—of course our rules are very strict about that—I will take a drink with any of them.

By Mr. BLUM:

Q. I will repeat my question: Mr. Arnold, did you offer it to them or did they go over and pour it themselves? A. No, sir; I might say this, when I came in there, to the best of my recollection, it was in process before I got in there.

Q. But the champagne, when the champagne was brought in, did you offer it to the men or did they take it themselves? A. I set it on the table and there it was for them, and I never even opened it.

Q. You sent one of the men out to get it? A. I told them, yes, to go out and get it.

Q. How many other occasions had you brought champagne in to the office and furnished it to your men? A. I would say never before.

Q. Never before? A. That is right.

Q. And this was the Saturday prior to the date that they were discharged? Is that true? A. I won't swear to that.

Q. Was there any discussion that went on that evening about the union between you and those drivers? A. (765) There was not.

Q. Did you ever on any occasion say to any of your drivers, that they would have to make up their minds whether they are going to *say* in the union or stay in your employ? A. I have talked to these men, and I have never threatened any of them along those lines, sir.

Mr. LYNCH: Did you tell them that? Answer that question specifically.

By Mr. BLUM:

Q. Did you have any discussions with them about unions? A. I have talked to them about unions.

Q. What was the nature of that? A. Some of them came to me and asked my advice, and I talked with them, and I asked some of them, "Did you sign?" and they would say, "Yes", and I asked them if they knew what they were doing and if they had talked to anybody, and if they knew what they had signed, and some of them didn't know what they had signed, and I even had one of them say he didn't sign and another fellow signed for him, so that there are many different angles of it, and the thing that I tell them, it is up to you, to use your own head, and don't let somebody else use your head for you, and I would like to have an answer just how you feel. That is what I said, and I didn't try to lead them any way.

(766) Q. But you wanted them to come to you to tell you how they felt about it? A. I didn't tell them particularly to let me know, but I would like to know whether they did want to or didn't want to.

Q. Was that asking them to do that, prior to joining a union? A. I would say some of them had and some of them hadn't.

Q. And those that hadn't, did you ask them to come to you prior to joining, and to tell you how they had made up their minds? A. Prior to that?

Q. Those that hadn't joined, did you ask them to come back to you, and tell you whether or not they had made up their minds? A. That was a general talk to all of them.

Mr. BLUM: I think that is all.

RE-DIRECT EXAMINATION.

By Mr. LYNCH:

Q. Mr. Arnold, in these talks that you had with them, was there ever any intimation by you that if they stayed in the union they would lose their job? A. No, sir.

Q. Or were they ever told that they should come the next morning and let the office know whether they were (767) still in the union or not? A. I have told them, as a general thing, just as I have quoted here, but there wasn't any particular time mentioned.

Q. And are people in the union still there working for you? A. As far as I know, there is.

Q. Yes. Now, Mr. Arnold, on the question of serving the fellows a drink, do you know as a fact that your son Joe has had drinks for those fellows very frequently? A. Yes. That is not the only place that he had a drink, either.

Mr. CARMODY: That is off the record.

Mr. LYNCH: That is all.

Mr. CARMODY: May I ask just one question?

By Mr. CARMODY:

Q. What form of discipline do you use with drivers or with men in the shop for infractions of the rules? Do you ever furlough a man? A. Yes, sir.

Q. For definite periods of time, a day, or a few days, or a week, or two weeks? A. We do with the drivers.

Q. With the drivers? A. Yes.

(768) Q. You furlough them sometimes? A. Yes. I might say that my duties are so broad, and have been

for quite a long time—I tried to do everything myself, and I had to segregate that work, and I have great confidence in Mr. Wilsey, and he has been a wonderful teacher to these men, and I know it, and it has been almost like a big school of education, and I haven't paid much attention to the shop because of that condition. I can go very lengthily into details but I don't think that is necessary. On the drivers, I have paid a little more attention to them, and we have had them in meetings at different times, and I am sorry to say that we couldn't have the meetings oftener, but things are so that that makes it impossible even to have meetings, as I used to have them.

Q. What I was getting at was this: That there has been no testimony here to the effect that any of these men were furloughed, and they were all either fired, or they were kept at work. There was no middle ground, and there is in the transportation industry, as you well know, a long standing practice of furloughing men for certain periods of time, and I wonder whether you had used it. And you said that you have used that method. A. That is very true, and there are many other things that it is customary in the transportation business, that (769) we do not do, outside of that, I mean. I don't know just how far, but it is hard to explain these things unless you thoroughly understand them, and they are thoroughly explained, and I am willing to do that.

Q. We don't have very much time here. A. I might say that we do, if we have a man that is late and he is often given time off for any other misdemeanors, but in all of these cases that we have set forth here, we can show, amply, and I have sat here and listened, and it has been interesting in some points, and very tiresome in others, but there are some of these men that ought to have been fired long ago, and we have still got some more that have got the same thing tied to them, and one of these men that has been fired, I had a man come to me Sunday and made the same remark, and he said he should have been fired long ago, and he got out with a bottle with another man, and took a drink, and those kind of things, right in service.

Mr. BLUM: Is he a union man?

The WITNESS: Is he a union man?

Mr. BLUM: Yes.

The WITNESS: To the best of my knowledge; I don't know whether you would call them union or not. I think he signed up.

By Mr. BLUM:

Q. Have any of those men that you say ought to have been fired a long time ago, are those union men? (770) A. I said—when I said that—I said that some of them that have been and some of them that haven't.

Q. You haven't fired those men, they are still in your employ? A. That has all been admitted to you. Your Chairman asked me now, on some of the other things that I understand have been brought out here, and more or less to belittle the organization on the salaries and one thing and another, I might say this there, you take the other large transportation companies, something else that is customary, when a man goes to work with them, what does he do? He puts up $25.00 before he goes to work, and we have them come here when they haven't that much money, and some of them need a shave, and maybe need lunch money, and need something else, and they get it, and there are many of those instances.

Mr. CARMODY: Here the driver puts up only the $5.00?

The WITNESS: The only thing is that, and sometimes we have to lend them that, and let me finish—and then you can ask all of the questions: My day here is wasted anyway.

All of these things enter into it, and we haven't had the system that we should have over there, and we recognize that, but I don't hesitate to say it in the open, and you don't have to take my word for it, but you can prove it by the State Corporation Commission: I have taken a licking, or a loss, up to 1935—I don't know (771) whether I want to give this to the public or not, of $170,000 to $180,000 and you can look at the State Corporation Commission, and last year we made a little over $10,000 and as a matter of fact, I have never taken one cent out of that company, but I have bled every pocket that I have got, to put it in there, to conduct that business, and now, would you, or would anyone in here,

put in these different agencies which I have heard about, and increase your expenses, when you just had one blank time to meet what you did have? Would you?

Mr. CARMODY: May I ask this question: Does the company have loans which it is required to meet, bank loans?

The WITNESS: I may say this, that outside of my current account, I have got about $6,500 a month to meet, in that company?

Mr. LYNCH: Indebtedness which the company owes?

The WITNESS: Yes.

Now, what is the question?

Mr. BLUM: What is your interest in the Independent Oil Company?

Mr. LYNCH: I object to that.

Mr. BLUM: I will withdraw the question.

The WITNESS: I don't mind answering it.

By Mr. BLUM:

Q. Does the Independent Oil Company sell gas and (772) oil to the Arnold Bus Company? A. Yes, sir.

Q. Does it make a profit on that gas and oil that they sell to that company? A. Yes, and no.

Q. What do you mean? A. What do I mean?

Q. Yes. A. The coach company has owed the oil company as high as $127,000 or $130,000 and owes them today close to $100,000 and that has been running for quite a long time and there is no interest added to it, and the losses for the Independent Oil Company in 1933, 1932, 1931, I would say was an average of $25,000 or $30,000 a year. And we can't govern and control the prices, and you may search the record, and these are separate corporations, and I do not and can not use one for the advantage of the other.

Mr. CARMODY: We will be finding out what contribu-

tion the New Deal made to the profits of these companies here in the District.

Mr. LYNCH: May I ask him a question?

Have you tried to get a loan from the R. F. C.?

The WITNESS: Yes, sir.

By Mr. LYNCH:

(773) Q. For the bus company? A. Yes.

Q. To buy new equipment? A. Yes, sir.

By Mr. BLUM:

Q. This $127,000 that the bus company owes the oil company; is that for the sale of gas and oil? A. Yes, sir. That is the way I kept it financed and kept it going, from one pocket to the other.

Q. Now, these things that you advanced to the drivers, of 35 cents for a shave or lunch money; did you ever take that out of their salary? A. I didn't say that I advanced any amount, but put it as I gave it, please.

Q. The money that you advanced for shaves and haircuts? A. I didn't say that I gave it to him, or I didn't say who gave it to them, but I know it has happened.

Q. It has happened? A. Yes.

Q. Is that deducted from this salary at the end of the week? A. Yes.

(774) Q. That is all. A. I don't want that to be a one-sided affair. There are many things there that have happened that weren't paid for, out of the money that has been loaned them.

Q. Do you carry it on your books as accounts receivable? A. No, sir.

Q. Then were they loans when they were given to the men or were they merely outright gifts? A. They may be uniforms; and away they went.

Q. The men owed you for them? A. Yes.

Q. That is all.

Mr. LYNCH: We rest our case.

Mr. BLUM: I would like to call Mr. Crissman.

Whereupon WILLIAM A. CRISSMAN was called as a witness on behalf of the Board, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Now, Mr. Crissman, were you ever in the office of Mr. Arnold, together with other drivers, and some discussion went on between you and Mr. Arnold about the union? A. I was in the office, yes.

Q. When was that? A. On Friday, I think it was (775) the 28th of February.

Q. Friday, the 28th of February? A. Yes, sir.

Q. Who else was in the office there? A. I couldn't give exact names, but there were six other drivers.

Q. Six other drivers and yourself? A. Yes.

Q. What conversation went on between you and Mr. Arnold? A. Well—

Q. Which Arnold? A. Mr. Leon Arnold, and when I turned in I was told I was wanted in the office, and there were several more men waiting to go in, and we went in, and Mr. Arnold started to explain some of his experiences with unions.

Mr. HUGHES: We ask for the conversation.

Mr. BLUM: State the words that he used, as near as you can remember.

The WITNESS: That would be a hard job.

By Mr. BLUM:

Q. You stated that he stated his experience with the union? A. On one occasion he was working in a grocery store, and that some union organizer came in and wanted to start a union, and he wouldn't, and the other man that was working there would, because he was getting a (776) larger salary than the other man was, and the organizer went to the owner of the store, and told him that he had to accept this union and they chased him out of the store.

Q. Did he tell you of any other experiences? A. Another one was, I think, the Cudahy Company, if I am

not mistaken, that they had a union, and in a certain length of time had gone out of business, due to the fact that he had joined a union, and he asked each of us in turn if we had signed or belonged to this union that we have joined.

Mr. CARMODY: Did he ask you?

The WITNESS: Yes; and I think all of us but one had joined the union.

By Mr. BLUM:

Q. What did you answer? A. I said, "Yes, I had joined".

Q. Did he say anything else to you? A. And he asked what I expected to gain from the union and I said, "More money and better working conditions or no job".

Q. And what did he say to that? A. He went on talking to someone else then, and later he came back to me and asked if I wanted to change my mind, and that I had time to reconsider, and I said, "No, I did not", and that was all, and I was through.

Q. Did you hear him say anything to yourself or (777) the other drivers about getting out of the union if they wanted to retain their jobs? A. No, sir.

Q. Was there any conversation along that line? A. No, he didn't make any outright threat at all.

Q. Did he say anything about making up your mind and letting him know later? A. Yes, they would make up their mind and let him know, and give word in the office the next day or later what they were going to do about it.

Q. Now, Mr. Crissman, what time did you go to work in the morning? A. 5:55; I was due at the garage.

Q. And what time were you off during the day?

Mr. LYNCH: I object.

Mr. BLUM: This is rebuttal testimony.

Mr. LYNCH: If it is in their words.

By Mr. BLUM:

Q. Were you ever driving the bus in the evening in

which this gentleman was a passenger? A. Not to my knowledge, for the past few years, no.

Q. In so far as those transfer incidents that he described this morning, were they the rules of the company that you were observing? A. We had orders not (778) to issue transfers during the rush hour or accept them during the rush hour.

Q. And when you refused to accept a transfer during the rush hour, were you observing the rule of the company? A. I took it as that, yes, sir.

Q. At the time that you refused to let the dog get on the bus, were you obeying the rules of the company? A. Yes, sir.

Mr. BLUM: That is all.

CROSS EXAMINATION.

By Mr. HUGHES:

Q. You say that Mr. Arnold on that occasion told you to make up your mind about the union, is that right? A. Did he say—he told me to make up my mind.

Q. You testified, as I understand it, that on that occasion when you were in Mr. Arnold's office, when he was there, that he said to you to make up your mind about the union, is that what he said?

Mr. CARMODY: I didn't hear that, but he came back to him and asked him whether he had changed his mind, and we can read back there and find out, but I don't remember that he testified to that.

By Mr. HUGHES:

Q. He came back, and he asked you if you had changed your mind? A. Yes. He said, "Bill, you have (779) had time to reconsider; do you want to change your mind"?

Q. Just prior to that time, did you consider changing your mind? A. No, sir.

Q. Did you talk to anybody about the matter? A. What do you mean by "anybody"? I have been to several meetings on different occasions.

Q. I mean just prior to the time that Mr. Arnold asked you if you had changed your mind, did you talk it over with any other men as to whether you should

change your mind, or had you consulted anyone as to whether you ought to change your mind or anything of that sort? A. No, indeed.

Q. You did not? A. No, sir.

Mr. BLUM: That is all.

I have M . Frederick, and he will be the last witness.

Whereupon THEODORE WILLIAM FREDERICK was recalled as a witness on behalf of the Board, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. Mr. Frederick, did you hear the testimony be-
(780) fore about the party in which liquor was served and champagne was served? A. Yes, sir.

Q. Were you at that party?

Mr. HUGHES: We object to that characterization.

Mr. BLUM: We will change the word "occasion" from "party".

The WITNESS: I was there.

By Mr. BLUM:

Q. How did you happen to go into the office? A. Baxter said they had some whiskey in there, and I decided I wanted to go in, and so I went in and rapped on the door, and Joe said, "Come in" and he said, "Will you have a drink?" and I said, "Sure", and he poured me out a drink, and we sat around there talking, and so I think we had another drink, and in the meantime Mr. Arnold came in, Mr. Leon Arnold came in, and Mr. Leon Arnold asked me if I had ever drunk champagne, and that quart of whiskey was gone, and we sent for another quart.

Q. Who sent for it? A. Joe sent a driver up to the store for another quart and I think while that other quart was coming back, Mr. Arnold asked me if I had ever drunk champagne, and so he said to a driver by

the name of Stockley, "Go and look in the back of my car, and bring in that bottle, Frederick said he had never (781) had any", so Mr. Leon Arnold couldn't get the top off it.

Q. Did he try? A. Yes; and Joe said, "I am more used to that, let me have the bottle", so Mr. Joe Arnold opened the bottle and he passed it back to Mr. Leon Arnold, and then I got a glass of the champagne.

Q. You weren't here this morning, were you? A. No.

Q. While you were in there, were there any other drivers there, or mechanics? A. Yes, sir. I would say that there were three more mechanics, and possibly five or six drivers.

Q. Was anybody there on his own time, or on the company time? A. No, everybody there was on his own time.

Q. On his own time? A. Yes.

Q. Was there any discussion held that evening between Mr. Arnold and you and the other men as to the union? A. No, sir.

Q. Did he make any statement about the union at all? A. No, sir; there was nothing about the union. There was things came up in that direction, but I wouldn't base it on the union.

(782) Mr. BLUM: I think that is all.

The WITNESS: It was in a round about ways.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. Mr. Frederick, you have known Joe for a long time? A. Yes, sir; we have been out on parties together.

Q. And you have been out on parties together, personal parties and drunks together? A. Yes.

Q. And he and you call each other by your first names? A. Yes.

Q. And if you thought Joe at any time had a bottle, you wouldn't hesitate to go in and ask him for a drink? A. No.

Q. And if Joe thought you had a drink in your car, and he thought you had one, he would ask you for one? A. He never did.

Q. He is the kind of fellow that would? A. He would, if he knew I had one.

Q. Joe was drinking some of that first quart that finally was exhausted? A. That first quart was pretty well gone when he got in there.

Mr. LYNCH: That is all.

Mr. BLUM: I think that is all, but before concluding (783) the case, Mr. Examiner, I want to introduce into evidence, if the other side has it, the statement which they were supposed to prepare, showing the number of passengers they carried in the years that were outlined, and I would like to renew my motion to amend the complaint to include the name of John Dove, who is not mentioned in the complaint, and to amend the complaint to correct the name of George Bell to George Beall and the name of Edward Moore to Everett Moore, as it appears in the complaint.

Mr. HUGHES: There is no objection in the change to Beall's name, but we do object to the Dove amendment.

I will say this, that we wouldn't object to the form of the amendment, if you want to attempt to insert it right here, simply to insert his name in the petition.

Mr. BLUM: That is all I want to do.

Mr. HUGHES: But we do object to the right to grant relief to Dove in as much as he was not in the original complaint.

Mr. CARMODY: There are several ways it could be done. It could be done by adding his name here, and it can be done by stipulation that the evidence in this case, or whatever evidence there is bearing on it, would be acceptable, in lieu of another hearing, and I can't quite see the wisdom of a hearing about Dove; apparently everything that can be said for him, and against him, has been said here.

(784) Mr. LYNCH: I think that there is no need to have another hearing on just one name. Let his name go in there, and every objection which has heretofore been made against him is made against him.

Mr. HUGHES: Was he a witness?

Mr. CARMODY: Yes, and he was cross-examined.

Mr. BLUM: Can I have that statement that I referred to a minute ago.

Mr. LYNCH: Yes.

(The paper was passed to Mr. Blum.)

Mr. BLUM: We offer this as an exhibit, and with the request that I think both sides ought to concur in, that the hearing be not considered closed at the present time, in the event that either side cares to take additional testimony within the next few days.

Mr. LYNCH: We don't want to do it, and we want to close the hearing, with the request of as early a decision as possible.

Mr. CARMODY: The record of the passengers carried is accepted in evidence.

(The document referred to was received in evidence, and marked "Board Exhibit 11".)

Mr. CARMODY: Does counsel wish to submit a brief?

Mr. BLUM: I withdraw that.

Mr. CARMODY: And no briefs will be submitted, and (785) no further argument.

Mr. LYNCH: We might make a short argument, to take a short time.

Mr. BLUM: I won't make any, so that they can go right ahead.

Mr. CARMODY: Can you do yourself justice in ten minutes?

Mr. LYNCH: I think so, Mr. Examiner.

Mr. CARMODY: We will say fifteen minutes, then.

(Thereupon argument was heard on behalf of the Respondent, which at the direction of the Examiner was not reported.)

(Whereupon, at the direction of the Examiner, hearing in the above cause was concluded, and the hearing adjourned at 4:30 o'clock p. m.)

(787) **NOTICE OF HEARING.**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

Washington, Virginia and Maryland Coach Company, and Local Division 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al.	Case No. C-63

PLEASE TAKE NOTICE that a further hearing will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it, on Friday, May 1, 1936, at 10 o'clock in the forenoon,

in Room 406, Denrike Building, 1010 Vermont Avenue, Washington, D. C., for the purpose of taking evidence with respect to the allegations in the Complaint concerning Stanley F. Smith, R. C. Stanton, Harry Gildart, and Ray Miller.

You may appear and be heard if you so desire.

Dated at Washington, D. C., April 25th, 1936.

By direction of the Board:

(s) BENEDICT WOLF,
BENEDICT WOLF,
Secretary.

Messrs. Robert E. Lynch
and
Wm. J. Hughes, Jr.,
Investment Building,
Washington, D. C.

(788) **NOTICE CHANGING HEARING DATE.**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of

Washington, Virginia and Maryland Coach Company, and Local Division No. 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al.	Case No. C-63

PLEASE TAKE NOTICE that the hearing scheduled to be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it, on Friday, May 1, 1936, at 10 o'clock in the forenoon, Room 406, Denrike Bldg., 1010 Vermont Avenue, Washington, D. C., for the purpose of taking evidence with respect to the allegations in the Complaint concerning

Stanley F. Smith, R. C. Stanton, Harry Gildart, and Ray Miller, will be held at the same time and place on Saturday, May 2, 1936.

By direction of the Board:

(s) BENEDICT WOLF,
BENEDICT WOLF,
Secretary.

Messrs. Robert E. Lynch &
William J. Hughes, Jr.,
Investment Building,
Washington, D. C.

(789) **ORDER DESIGNATING TRIAL EXAMINER.**

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 28th day of April, 1936.

Present: J. Warren Madden, Chairman, Edwin S. Smith.

In the Matter of

Washington, Virginia and Maryland Coach Company, and Local Division 1079, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, et al.	Case No. C-63

A charge having been filed in this matter, and it having appeared to the Regional Director of the Fifth Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that J. Warren Madden act as Trial Examiner in the above case, in place

and stead of John M. Carmody, and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

BENEDICT WOLF,
BENEDICT WOLF,
Secretary.

(Seal of Labor Relations Board)

(793) **STENOGRAPHIC REPORT OF HEARING BEFORE J. WARREN MADDEN, TRIAL EXAMINER, ON MAY 2, 1936.**

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FIFTH REGION

In the Matter of

Washington, Virginia and Maryland Coach Company,
and
Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division 1079, et al.
} Case No. C-63

Room 407, Denrike Building,
National Labor Relations Board,
Washington, D. C.
May 2, 1936, Saturday.

The above entitled matter came on for hearing at 10:00 o'clock a. m.

Before: J. Warren Madden, Trial Examiner.

Appearances: Jacob Blum, Attorney for the Board; Robert E. Lynch, Attorney for the Company.

(794) PROCEEDINGS

Examiner MADDEN: The hearing will please come to order.

Mr. BLUM: We have one witness who is not here, but I think we can proceed, Mr. Examiner.

I would like to first move to amend the complaint to correct the spelling of two of the names that appear in the complaint. The name "Clyde J. McCaulley" should be "M-c-C-a-u-l-l-e-y; and the name Lawrence Chase should be Lawrence J. Chase, Jr.

(At this point Mr. Lynch entered the room.)

Mr. BLUM: I would like to notify Mr. Lynch that the hearing was called promptly at ten o'clock by the Examiner, but we have only gone this far. We have moved to amend the complaint to correct the spelling of the two names that appear in the complaint, Mr. McCaulley and Lawrence J. Chase, Jr., who appear in the complaint.

Mr. LYNCH: We object, of course, to any amendment at this time. We have had a hearing here for day after day, and it was announced closed by all parties, and the matter was argued and submitted to the Examiner, and we object to any amendments at this late date, and may I also while I am on my feet, object to any further hearing, or the offer of any further testimony by the other side, on the grounds which were heretofore stated in my written communication to the Board when they requested certain additional information, (795) through Mr. Blum and Mr. Wolf, and Mr. Smith, on the grounds as stated.

We submitted certain information over objections, and now we have another hearing which is going on. I may say at the time that we closed the other hearing, the previous hearing, we asked the Examiner to give us a decision as soon as possible, and we wanted the matter completely closed then, and it was closed, and he promised to do that, and I think over a month has ex-

pired, and we haven't heard anything yet except for a new hearing, and we object to any additional or further proceedings of any kind or nature whatever.

Examiner MADDEN: You object specifically to correcting the spelling of these names?

Mr. LYNCH: Yes, because it should have been done before.

Examiner MADDEN: The objection is overruled, of course.

Mr. LYNCH: Exception.

Mr. BLUM: I will make no statement on that. Now, this hearing is called, I believe, specifically, to take the testimony of four men who have been discharged, who appear in the complaint, and who did not testify at the previous hearing. We have been unable to locate two of those men, that is Mr. Stanley Smith, and Mr. Stanton, and I don't recall his first name, and therefore I am going to move that the complaint be dismissed as to those two men.

Examiner MADDEN: The motion is granted.

(796) Mr. BLUM: That is Stanley F. Smith, and R. C. Stanton.

Mr. LYNCH: Do I understand that you take the position that it is your duty to go out and corrale these people and bring them in here when you say that you have been unable to do that, rather than them making the complaint themselves?

Mr. ARTHUR REYMAN: Mr. Blum didn't exactly state the circumstances. I communicated with our clients immediately on being notified that there would be an additional hearing, and the officers of the union tried to locate these two men and we understand this morning from Mr. West, the Financial Secretary, that he has been unable to find the two men mentioned by the complaint.

Wherepuon ROY RAYMOND MILLER was produced as a witness for and on behalf o the National Labor Relations Board, and having been duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your full name? A. Roy Raymond Miller.

Q. Where do you live? A. My mail address is Hyattsville, and I live on Riggs Road, Maryland.

Q. By whom were you last employed? A. I was (797) last employed by the Garbo and Hutton Construction Company.

Q. How long ago was that? A. Two weeks ago.

Q. And by whom were you employed before that? A. Well,—

Q. Were you employed by the Washington, Virginia and Maryland Coach Company at any time during this year? A. I was.

Q. When was that? A. My last employment was March 5th.

Q. How long prior to March 5 had you been employed by that company? A. I believe I went to work there about the 23rd of September.

Q. What year? A. Last year, 1935.

Q. 1935? A. Yes.

Q. What was your position with the company? A. Mechanic.

Q. Where? A. In Clarendon, Virginia.

Q. At the garage? A. Yes.

(798) Q. Of the what company? A. The Washington, Virginia and Maryland Coach Company.

Q. Were you employed on the day shift or the night shift? A. Well, for the first month or so I was working in the day time and then I was transferred to nights.

Q. At the time that you were dismissed, were you working days or nights? A. I worked days, two days.

Q. Now, were you a member of the Local 1079, the Union involved in this case? A. I am.

Q. When did you become a member of that association? A. I believe it was on or about the 28th of February, somewhere along in there.

Q. This year? A. Yes.

Q. 1936? A. Yes.

Q. And when were you discharged? A. March 5.

Q. Will you explain the circumstances of your discharge, please? A. The only thing that I know about it is that they took me off nights and put me on day time, (799) and I worked a day and a half day time, and on the morning of March 5 I was discharged, and when I went to work I went out on a call, and I was out to about 11:30, and I came back to the garage, after the call, and went in to see Mr. Wilsey, as to what I should do, and when I got in, Mr. Wilsey told me it was all over, and I asked him what, and he said, "I have got to let you go."

I said, "What is the matter, is my work not satisfactory"?

And he said, "Perfectly satisfactory, and if it wasn't, you wouldn't be here two days".

And then I said, "Well, what is the firing for"?

And he said, "You have been mis-led".

And I said, "What do you mean?" And I said, "In other words, you are firing me on account of the union", and he said, "Yes".

I said, "Well, I am three times seven, and I have been voting a long time, and I have been voting a long time and I guess I know my own rights", and about that time the telephone rang and called him into the office.

And so he said, "Let us go to the office" and I said, "All right", and we went around to the office and he went into the office himself, personally, and stayed there talking to them for some little bit, four or five minutes, and they then called me in there, and Mr. England handed me a little slip, and I read it, and I forget what the reading was, something about "Your salary is paid up to date to such and such a date", $24.85 I believe (800) it was, and I signed it, and gave it to him, and then I had a little misunderstanding about my pay further back, and I talked to them about it, and we got straightened at that time, and I asked Mr. England what the fire was for, and he told me I ought to know, and I said, "Is it on account of the Union", and he wouldn't

give me no definite answer and he said, "You ought to know".

And I said, "Mr. Arnold, is my work satisfactory", and he said, "Yes, it is perfectly satisfactory, but we want to make it more satisfactory".

Q. Which Mr. Arnold was that? A. Mr. Leon Arnold.

Q. Was he present? A. He was present at the time, so I accepted my pay and turned around and bid them the time of the day and walked out.

Q. Are you employed now? A. No, sir.

Q. You say you started to work for the company in September. A. I believe it was in September.

Q. And between September and March, when you were fired, was there any cause, or did the company have any cause to complain about your work.

Mr. LYNCH: Well, I object to that.

(801) Mr. BLUM: I withdraw the question.

By Mr. BLUM:

Q. Did the company call you in to reprimand you about your work at any time? A. No, sir.

Q. Did you receive any pay increases during that period of time? A. No, sir,—Yes, sir, I received a five dollar increase from the time that I went off from days on to night work.

Q. What was your average salary at the time that you were discharged? A. Thirty dollars a week.

Q. Was that one of the highest paid salaries in that company? A. It was.

Q. How many men in the company received an equal salary or more, of mechanics and drivers? A. None of them received anywhere near what I was getting, that is outside of some of the drivers who were long-timers in there that worked permanently.

Q. Have you earned any money between the time that you were discharged and the time of this hearing? A. I have.

Q. How much have you earned? A. I have earned about forty dollars, I believe.

(802) Mr. BLUM: That is all.

CROSS EXAMINATION.

By Mr. LYNCH:

Q. Where have you worked? A. For the Garbo and Hutton Construction Company, over at the University of Maryland.

Q. Is that where their office is? A. I couldn't say. Their main office is, I believe, they call it Mechanicsville. I am not sure that was the name on the check that they gave me.

Q. And you only made forty dollars? A. I didn't work there permanently.

Q. How much did you earn? A. At that job?

Q. On that job? A. I made sixteen dollars on that one job.

Q. How long did you work? A. Four days.

Q. Where else did you work? A. I worked for a man by the name of Rhodes.

Q. What is his first name? A. Earnest Rhodes.

Q. What is his address? A. His address is the same as mine.

(803) Q. What is that? A. Riggs Road, Maryland. The Mail House is Hyattsville.

Q. How much did you earn from him? A. I made twenty-two dollars.

Q. For how long a period of work? A. About seven days.

Q. How much were you getting at the bus company? A. Thirty dollars a week.

Q. Where else have you worked? A. Nowhere.

Q. Have you tried to get work? A. I have.

Q. Who first talked to you about this union? A. Various ones.

Q. Who was the first one? A. Well, now, I can't say who was the first one. I heard it from the drivers room, and I heard a bunch of the drivers talking about it.

Q. When were you there? A. I go in there every day.

Q. What time of the day? A. In the morning, when I came on at night.

Q. And you hang around there and you heard the drivers talking about it? A. I did.

(804) Q. Did you ever talk to Mr. Clark? A. I never have.

Q. Did you ever see Mr. Griffin around? A. I have seen him, but I don't know the gentleman.

Q. You know who he was? A. Yes.

Q. And you talked to him about the Union? A. I did not talk to him about no union.

Q. You saw him on the premises? A. Yes, he worked there.

Mr. BLUM: I didn't want to interrupt before, but certainly this line of questioning, although I want to give Mr. Lynch as much leaway as possible, is not certainly proper questioning. It doesn't make any difference who this man talked to about the union, but the question was, was he fired because he was a member of the Union, and how he joined is not a question at issue in the case.

Examiner MADDEN: He may continue this line of questioning, and we will see where he is going.

Mr. BLUM: Then may I make this statement. I would like to take exception, or make an objection to the manner of questioning, because it is certainly intimidating the witness, and it can be carried on in a much more courteous manner.

By Mr. LYNCH:

Q. You are not intimidated, are you, Mr. Miller? A. Well, we are not going very good. That is a rather (805) personal question—

Q. You say I am asking a lot of personal questions? A. Yes.

Q. You object to answering these questions? A. No, I will answer them.

Q. You are not intimidated?

Examiner MADDEN: Your manner is a bit overzealous.

Mr. LYNCH: Maybe that is because I have a very great responsibility here in regard to this company, and if I am over-zealous that appears by reason of the responsibility that I have.

Examiner MADDEN: You will be given a perfect opportunity to carry out that responsibility, and I am simply suggesting that your manner is a bit over-zealous, and we would all be getting along better if you would restrain it somewhat.

By Mr. LYNCH:

Q. Where did you work before this case at the Arnold Bus Company? A. I worked for the Crude-Levis Oil Company, the Cities Service Company.

Q. How long did you work for them. A. Forty-five days.

Q. How long did you work before that? A. I didn't work here in Washington.

(806) Q. Where did you work? A. Before that I worked in Louisiana.

Q. How long did you work there? A. I worked down there eight years.

Examiner MADDEN: What is this about?

Mr. LYNCH: Just to show that he was a man just going from one job to another, and we expect to show later that he wasn't fired because of any union activity, but fired for other reasons, and it is consistent with his work right along, forty-five days for one fellow, and five days for another fellow, and two or three months for one here, and I think it is admissible and I think that the Board ought to know it.

By Mr. LYNCH:

Q. You were receiving five dollars more for night work than day work? A. I was.

Q. And you were taken from night work and put on the day shift? A. Yes.

Q. So you got less on day work? A. The man didn't tell me anything about any less pay.

Q. You did get less? A. No, sir; when I first started I did. But when I was paid off they paid me off the same as at night.

Q. You know as a matter of fact that all night men (807) get higher pay? A. I didn't know it, no, sir. The men at that night work don't get near as much as the day men do.

Q. They may be doing different work. A. The same identical work.

Q. What was your work, Mr. Miller? A. I was hired as a mechanic, but I did a little of everything.

Q. What else did you do besides mechanical work? A. One night out of the week I was foreman on the job.

Q. What else? A. Whatever Mr. Harmon saw fit for me to do, that is what I did.

Q. What kind of work did you do besides mechanical work, that is what I want to know.

Q. Well, anything on the buses in the line of mechanical work.

Q. Did you do any other work besides mechanical work. A. Yes.

Q. What was it? A. Well, sir, I swept the buses out several different times.

Q. What else? A. I have cleaned the windows off on them, and that is a different kind of work, and I went (808) out and threw sand on the hills out there, and that is a different kind of work, and I swept out, and that is a different kind of work.

Q. So actually, you were doing a job that the ordinary laborer does around there, many times, weren't you? A. That is right.

Q. That is all.

Mr. BLUM: That is all, Mr. Miller.

(The Witness was excused.)

Mr. BLUM: At this point, I would like to introduce this paper, which is the answer to certain questions made by Counsel for the respondent, at the request of the counsel for the Board, and a request was made of the counsel for the respondent to furnish certain information which would be filed in this case as a stipulation, relative to certain of the Interstate Commerce features of the case, relative to the average salaries of all of the men in the case, and relative to the date of discharge of Clyde J. McCaulley.

The counsel for the respondent has very kindly consented to answer those questions, and has forwarded this in written form.

Mr. LYNCH: We answered it because the Board told us to answer it, may it please the Examiner. We didn't answer it voluntarily, and we objected to answering it, and we filed certain written objections with that paper. Now, I think that the objections ought to go in with the paper.

(809) Examiner MADDEN: The information is correct?

Mr. LYNCH: Yes, furnished by us at the direction of the Board.

Mr. BLUM: Also, as I have been informed that it will be impossible for us to get ahold of Mr. Guildart, who is also named in the complaint, as one of the discharged employees, I move that the complaint be dismissed as against him.

Examiner MADDEN: All right.

Let the record show that the counsel desires the objections which he made in writing to the answering of these questions, of which he sent to the Board, to be considered in connection with this written answer.

Mr. LYNCH: And this is received as an exhibit by the Board, from information furnished at the direction of the Board over the objection and exception by the respondent.

Examiner MADDEN: Yes, it is received as the next exhibit.

(The document referred to above was marked Board's Exhibit No. 12, and received in evidence.)

Mr. BLUM: I would like to call Mr. England.

Whereupon HAMMOND H. ENGLAND was produced as a witness for and on behalf of the National Labor Relations Board, and having been previously duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

(810) Q. Mr. England, I am going to ask you to look at Board's Exhibit 10A, which was produced and filed in this case at the previous hearing, and I ask you to look at that. I ask you, did the Washington, Virginia, and Maryland Coach Company you ever reply to that letter?

Mr. LYNCH: Wait a minute, now. You don't want to ask that question, do you?

Mr. BLUM: Yes.

Mr. LYNCH: Go ahead, and answer it if you can.

The WITNESS: In writing?

By Mr. BLUM:

Q. Yes. A. No, sir.

Q. Did it reply to that letter in any other manner? A. As far as I know, through our attorney, Mr. Lynch.

Q. Through your attorney, Mr. Lynch? A. Yes.

Q. As far as you know? A. Yes.

Q. Now, will you tell us about how Mr. Lynch replied to that? A. I was present at the time, sir.

Mr. LYNCH: This is entirely different from any-
(811) thing which was set forth in the notice of the hearing here. This is something which is an exhibit, and was referred to and offered in the original hearing, and then we have a notice here that there will be a hearing with regard to four people, and then he comes back and over a month has gone by, and he has had all of this testimony, and he has gone over it and mulled over it, and then he wants to ask some more questions about it, and I submit that it is the grossest and unfairest kind of a practice, and I object to it.

Examiner MADDEN: You all have the advantage of me, because I don't know what this is about. Now, will you be good enough to tell me?

Mr. BLUM: This letter was filed as a Board's ex-

hibit in the previous hearing, and it was the letter which the representatives of the Union had sent to Mr. Leon Arnold as President asking him to meet and bargain with the representatives of the Union, and this is already in evidence.

But in reply to the statement just made by Mr. Lynch, I want to say for the purpose of the record that the statement is absolutely untrue. The record has not been in my possession, and the exhibits are not in my possession, and I have not seen them since the time the case was heard before. All of these things were in the hands of the Board, and the Board's representatives.

I am here today in my capacity as Regional Attor-
(812) ney, at the direction of the Board, to take this additional testimony, and not because I have read the record and mulled over it and decided that I wanted to take additional testimony, and I think that the record ought to be cleared up on that score.

Mr. LYNCH: When this notice came in to me, I came over to see Mr. Carmody, who conducted the first hearing, and asked him about it, and he said that he knew nothing whatever about it, and about this notice that came to me about this additional testimony.

Now, not only that, but it doesn't make any difference at whose suggestion, the Board can't, I submit, and there is nothing in the record to show that the Board has directed Mr. Blum to go in here about some piece of evidence offered in the other hearing, and particularly where it is stated in the notice here that this hearing is scheduled and conducted by the National Labor Relations Board, at this address, for the purpose of taking evidence with respect to the allegations of the complaint concerning Stanley Smith, R. C. Stanton, and these other two men, and it will be held Saturday, May 2, 1936, and I submit that they can't go any further.

Examiner MADDEN: That is all it says?

Mr. LYNCH: That is all it says, and he shouldn't be permitted to go into evidence which has already been taken and completed.

(813) Mr. BLUM: I submit this, Mr. Chairman—

Examiner MADDEN: Now, just a minute.

Mr. BLUM: In addition to that notice of complaint, however, a *subpoena duces tecum* was served on Mr. Arnold, asking him to be here and to produce certain records, about which he was to be examined which do not take into consideration examination of these men.

Now, he had that notice, and I might add further, that I understand that at the request of Mr. Lynch himself, that Mr. Arnold could not be here, and he asked that Mr. England be substituted, in Mr. Arnold's place, to come up here and testify and produce those records that we had asked for.

The *subpoena duces tecum* concerns other matters which do not appear in the notice of the complaint at all, and I am examining him along those lines.

Examiner MADDEN: What is this, you say that you understand that Mr. Lynch did thus and so. How do you understand it?

Mr. BLUM: I was informed of that by Mr. Smith.

Examiner MADDEN: Did you have communication with Mr. Lynch?

Mr. SMITH: Mr. Lynch called me on the phone the other morning and stated that it would be impossible for Mr. Arnold to be at the hearing, and asked if it would be satisfactory to substitute Mr. England, and I (814) told him that it would be satisfactory for Mr. England to appear here in response to the *subpoena* in lieu of Mr. Arnold.

Mr. LYNCH: May I clear up one point. Mr. Smith, for the purpose of the record, is an employee of the board, I take it, and a *subpoena* was served upon Mr. Arnold to produce certain records, which I presume is here—the *subpoena*,—and I told Mr. Smith that Mr. England was more familiar with this matter than Mr. Arnold, and if it was just as agreeable that Mr. England would be a better person to take it, and respond to it than Mr. Arnold, but not only that but Mr. Arnold

couldn't be here this morning, and so he said, "All right".

Now, of course that doesn't mean that I waive any objection that may be made against the *subpoena*. I object to any information which is called upon in the *subpoena*, and not only that, but nothing in the *subpoena* relates anyway at all to this paper which Mr. Blum is now asking the witness about.

Examiner MADDEN: Let me see the *subpoena*.

The WITNESS: This is the *subpoena* here.

Examiner MADDEN: Now, this *subpoena* is answered by that exhibit, is it not?

Mr. LYNCH: That is so.

Examiner MADDEN: He is requested to bring with him the following books and records and so forth, showing the proportion of persons, express and other articles carried by the Washington, Virginia and Maryland Coach (815) Company in interstate commerce, during 1935 and to date in 1936.

Now, do you have that information. Is that in that exhibit?

Mr. BLUM: That *subpoena* was issued after we had gotten this information, because it wasn't as full as we had requested it in our questionnaire.

If you will note the answer to the first question there, it merely states a certain amount of papers or express or mail in dollars and cents, without any explanation of what those dollars and cents mean, or whether that was carried in interstate commerce or merely carried within the District or merely carried within the State of Virginia, and the question that was asked of Mr. Lynch, to which that was supposed to have been a reply, was what proportion of that was in Interstate Commerce.

Examiner MADDEN: The proportion of persons, express, and other articles which were carried in interstate commerce.

Mr. BLUM: The answers to the second and third question are perfectly all right, and I am not going to make any examinations as to those questions.

Mr. LYNCH: We object to him asking any questions about the first item.

Examiner MADDEN: It seems to me that your conversation with Mr. Smith was very mis-leading, Mr. Lynch.

Mr. LYNCH: I don't want to have the Examiner (816) misunderstand me, and I said that if Mr. Arnold were here I would still object to it, and we submitted it over our objection, you see.

In other words, no matter who produced it, it is objectionable, and that is not to have any bearing upon the issues in the case, and secondly, not being proper under this notice.

Examiner MADDEN: Now, let us see what we are talking about. Are we talking now about this information which is asked for?

Mr. LYNCH: Yes.

Examiner MADDEN: Why do you say it has no relation to the issues in the case?

Mr. LYNCH: Because the only issue is whether or not these people were fired as a result of their activities with the Union.

Examiner MADDEN: Do you mean that there is nothing in the pleadings or in the way in which the case was tried in the first hearing, raising any question relating to commerce?

Mr. LYNCH: We raised none.

Examiner MADDEN: Of course, it is always possible that a court might take the position that this question of interstate commerce was a jurisdictional one, which parties couldn't waive themselves into the jurisdiction of the court. So that while I don't know what position the court would take on that, I don't think that the facts

(817) of commerce should be left out of the record, and so it seems to me that they are perfectly relevant, so that on your objection on the ground of irrelevancy is overruled.

Mr. LYNCH: What about my objection on the ground that they are not called for in the notice?

Examiner MADDEN: When was your conversation?
Mr. SMITH: It was Thursday

Examiner MADDEN: The day before yesterday.

Mr. LYNCH: After the hearing date was set.

Mr. SMITH: Yes.

Examiner MADDEN: I should suppose that this is what would have happened: If you had said at that time, now, we don't propose to furnish this information, and it is not within the terms of the notice of the hearing, I should suppose that then the attorneys for the Board would have revised their notice of hearing, in such a way as to get it in.

In a conversation with you, you gave them nothing to indicate that you were going to take that position here.

Mr. SMITH: Mr. Trial Examiner, in spite of the notice of hearing, the Board however has the right of *subpoena*, and this man is here in answer to a *subpoena* and I see no reason why he can't be quesioned not only on the information requested in the *subpoena duces tecum* but also in response to the notice or connection with any other information that we wish to question him on, concerning the *subpoena*.

(818) That is not involved necessarily in the notice of hearing.

Examiner MADDEN: Of course, there is, it causes us all to wonder why you didn't put in your notice of hearing what you wanted, and why it should be necessary to issue a *subpoena* which was inconsistent with the notice of hearing.

Mr. BLUM: The answer to that probably would be this, Mr. Examiner: That when I first learned that there was going to be additional testimony taken in this case, I came over to Mr. Lynch's office personally and I told Mr. Lynch that the case was going to be re-opened, and that we were going to take additional testimony along two lines, to take the additional testimony of the men who did not testify in the case before, and certain questions relative to interstate commerce, but in order to save time, if Mr. Lynch would agree to stipulate as to those elements of interstate commerce that we wanted to prove, that we could shorten the hearing and we wouldn't have any more difficulty, and waste any more time at the time of the hearing.

Mr. Lynch at that time asked me to submit it to him in writing, and that he thought that he would get the information for me, and subsequent to that time, and the same day, I had a letter dictated here in this office which incorporated the questions that I wanted to have answered, and in the letter I instructed Mr. Lynch, (819) in the event he wanted to have any more information on that matter, to communicate with Mr. Smith, because I would be in Baltimore involved in other cases.

I left Washington that day, under the impression that the questions that I had asked in the letter that I forwarded to Mr. Lynch on that day, would be answered, so that we would not have to have a hearing on that particular feature of it, and the notice of hearing was drawn up this way, because that is the only question left, the testimony of the four men.

When I got back to Washington, I found that Mr. Lynch had sent a letter to the Board, protesting the answering of those questions which I had filed, but that he would do so if the Board ordered him to do so. Subsequently, I saw a copy of the letter in the Board's file, in which the Board had requested Mr. Lynch to answer the questions, and meanwhile this notice of hearing had gone out, if I remember my dates correctly.

Mr. LYNCH: You don't remember your dates correctly.

I remember them very distinctly, and I want to correct one thing right now. You never said a word to me about having four men come in here and testify when you came to my office. I told you that I

thought that we could get together on the stipulation, and we couldn't, and I objected to it.

Examiner MADDEN: You couldn't have done any-
(820) thing about these four men. That wasn't anything that you could have furnished.

Mr. LYNCH: No, I couldn't. I couldn't consent that they were fired because of union activities, which wasn't the fact.

Examiner MADDEN: So it was necessary to hold an additional hearing.

Mr. LYNCH: But this notice came long after my objection to the other question. I had assumed, as a matter of fact, that the Board had accepted this statement which was given here and offered in evidence this morning, and it was filed, and after that was filed then we got the notice that they were going to have a hearing about the four men.

I will take the Board's ruling on it, irrespective of what it is.

Mr. BLUM: And I would like to finish my statement.

Examiner MADDEN: I want to know this: If we are going to get into a technical jam here because of the inconsistency between the *subpoena* and the notice of hearing, I am not going to take the evidence.

I am going to direct that the case be set down for a further hearing, at such time as you gentlemen can decide what evidence you want, and I will take this evidence only in case the respondent waives objection to that matter.

Mr. LYNCH: Of course, that puts me in rather an
(821) awkward position.

Examiner MADDEN: It puts you in the position where you have your choice.

Mr. LYNCH: And where this thing is prolonged longer. I will waive that point, on that then, on the ground that the notice didn't contain it, but I don't waive

any point as to its relevancy, and I only waive the point that he is going to ask him some questions about some matter which is more detailed on the first point, which he has filed in this exhibit.

Mr. BLUM: That is all that I want to question Mr. England on.

Examiner MADDEN: You are quite sure of that?

Mr. BLUM: Yes.

Examiner MADDEN: Now, let us watch that carefully and see that we stick to that.

By Mr. BLUM:

Q. Mr. England, all passengers picked up in the District of Columbia, where are they discharged? A. Where are they discharged?

Q. Yes. A. In the State of Virginia.

Mr. LYNCH: The *subpoena* says books and records giving the express and other articles carried by the Washington, Virginia and Maryland Coach Company, and now he is asking for the proportion of persons. Why (822) don't you ask him that question.

Mr. BLUM: I would like to bring it out in my own way.

Mr. LYNCH: Why don't he ask the question and let the witness answer it. Why go into this long discussion, that was all testified to before. You will find it not once but hundreds of times.

Examiner MADDEN: Will you state for the record what the facts are?

Mr. LYNCH: That men were picked up in the District of Columbia and carried into Virginia, and picked up in Virginia and carried into the District of Columbia, time and time again.

Examiner MADDEN: Does that mean that some pas-

sengers or that most passengers were, or that all passengers were.

Mr. LYNCH: It doesn't make any dfference.

Examiner MADDEN: Let us find out.

By Mr. BLUM:

Q. Were all of the passengers picked up in the District of Columbia, discharged somewhere in Virginia? A. That is correct, sir.

Q. Now, the proportion of passengers picked up in Virginia, they may be dropped off in Virginia, also, is that true? A. Yes, sir.

(823) Q. And they may be dropped off in the District? A. Yes.

Q. What proportion of those passengers picked up in Virginia are dropped in the District of Columbia? A. I can't tell you that.

Q. Would it be a majority of the passengers? A. I would say, "Yes".

Q. It would be more than fifty per cent? A. Yes.

Q. Now, you deliver mail also, do you not? A. Yes.

Q. Where do you get the mail?

Mr. LYNCH: That has all been testified to before.

Examiner MADDEN: Very well, let us get it over shortly. I take it that there must be a difference of opinion between you two men as to whether this has been testified to before, so make it as brief as you can.

By Mr. BLUM:

Q. Is any of that mail picked up in Virginia? A. Yes.

Q. Now, is all of the mail picked up in Virginia, dropped in the District of Columbia, or a proportion of it? A. A portion of it.

Q. What portion of it is dropped in the District? A. I can't tell you.

(824) Q. Over a period of a year. A. I can't tell you the proportion of it.

Q. In your opinion, is it more than fifty per cent? A. Not in this case, I wouldn't say, no.

Q. What percentage dod you think is picked up in

Virginia and dropped in the District of Columbia, of the mail? A. Well, a small percentage.

Q. Will you give us that figure that you say is a small percentage, can you set some figure? A. I would say thirty per cent.

Q. Now, the mail picked up in the District of Columbia, where is that discharged? A. In Virginia.

Q. All of it A. Yes.

Q. So that approximately sixty-five per cent of all of the mail on an average is carried in interstate commerce?

Examiner MADDEN: That, I should think, would not follow.

Mr. LYNCH: It is a matter of record there, and it depends upon the bulk of mail which is carried over that time.

The WITNESS: It is thirty per cent carried in the District, and the other carried in Virginia. It is picked up in Virginia and discharged in Virginia.

Examiner MADDEN: It would depend entirely upon whether as much mail was carried in one direction as (825) it would in the other.

By Mr. BLUM:

Q. Do you carry express on your buses? A. Yes.

Q. Where do you pick up the express, in Virginia? A. Some of it.

Q. What proportion of that express is dropped in the District of Columbia? A. I couldn't tell you that.

Q. Couldn't you make an estimate of that the same as you did with the mail. A. It is so very small, the express that we haul is so very small that I wouldn't attempt to give you an average to be fair.

Examiner MADDEN: You mean the total of the express?

The WITNESS: Yes, it is small.

By Mr. BLUM:

Q. Do you carry express from Virginia into the District of Columbia? A. Yes.

Q. Do you pick up express in the District to be carried into Virginia? A. Oh, yes.

Q. Do you know what proportion of the express picked up in the District is carried into Virginia? A. (826) That it still very small.

Examiner MADDEN: Are you speaking now about the amount or the proportion?

The WITNESS: The total amount. In fact, we are not in the express business, and we accommodate somebody out there that wants a package brought out.

Examiner MADDEN: You say with reference to passengers and mail, that all of them that you pick up in the District are carried into Virginia.

The WITNESS: That is all that is picked up in the District.

Examiner MADDEN: Is that also true of express?

The WITNESS: Yes.

By Mr. BLUM:

Q. You carried newspapers on your buses, didn't you? A. Yes.

Q. Is the same thing true of the newspapers picked up in the District, is that all of that discharged in Virginia? A. Yes.

Q. You picked up newspapers in Virginia? A. No.

Q. You just carried the newspapers one way? A. Yes. We pick up some newspapers and bring them into the District.

(827) Q. That is what I asked you. A. That is a correction.

Q. What proportion of the newspapers that you carry are discharged in the District? A. The big proportion is carried out of the District and over to Virginia.

Q. I am talking about papers that you pick up in Virginia, to bring into the District. A. Very small.

Mr. BLUM: That is all.

Mr. LYNCH: I think that is all. No questions.

Examiner MADDEN: May I ask whether the volume of this business was shown at the other hearing, or appears in this?

Mr. BLUM: It appears in dollars and cents in this answer here. (Referring to Exhibit 12.)

I would also like to offer at this time, the filing of the notice of the appointment of the Trial Examiner in this case, and the various services of the papers, and the notice of this hearing. They are all formal papers, and I am offering them as exhibits in this case.

Examiner MADDEN: They are received.

(The documents above referred to were received in evidence and marked as follows:

(Appointment of the Trial Examiner, as Board's Exhibit No. 13.

(Notice of Hearing and Postponement as Board's Exhibits Nos. 14A and 14B.

(828) (Affidavits of Service of Notice, as Board's Exhibits Nos. 15A and 15B.)

Examiner MADDEN: Where does this volume of business appear?

Mr. BLUM: It gives it in dollars and cents.

Examiner MADDEN: What about the passengers?

Mr. BLUM: That appears in the case.

Examiner MADDEN: All right.

Mr. LYNCH: I would like to call Mr. Wilsey.

Whereupon GEORGE WILSEY was produced as a witness for and on behalf of the respondents, and having been previously duly sworn by the Trial Examiner, was examined and testified as follows:

GEORGE WILSEY.

DIRECT EXAMINATION.

By Mr. LYNCH:

Q. You are the same Mr. Wilsey that testified previously in this case? A. Yes.

Q. Why was Mr. Miller discharged? A. Well, we were getting ready to discharge him for quite a while. The night foreman Mr. Harmon, said he wanted a better man, and that he wasn't thoroughly capable, and that he had to be put on other jobs, and that he didn't pick out his work much himself, and he had to be set on the (829) job. So I kept looking around for a man to fill in.

Q. Did you ever tell him that his work was satisfactory, and that he was fired on account of the union? A. No, he asked me that question, when I discharged him.

Q. What did you tell him? A. I said no, the man was all excited, and he was waving his arms around, and so I said—as he said, he was all excited and waving his arms around, and he said, "Am I fired on account of the union", and "You don't believe in equalization", and what not, and so I just sat still and listened to him. I don't make it a case to argue with any of the employees, and I never did do that. I just leave them talk and walk away. I can't afford that.

Q. Did you ever give any employee at any time any reason for being discharged? A. Sometimes I do, but mostly I don't. That is over a period of years.

Q. That is what I mean. A. Yes.

Q. Do you have any records as to work done by Mr. Miller here? A. I have his time slips from the first of the year, up to the time that he was discharged.

(830) Q. What about the bus that he worked on, the job on this date here? A. Mr. Miller was not a first-class mechanic, and at the time that I put him on at night, I wanted him to take that job to fill in, and he knows that.

Examiner MADDEN: You told him that?

The WITNESS: Yes, he knows that. He really realizes that.

Examiner MADDEN: What does he realize, that he is not a first-class mechanic?

The WITNESS: I just put him on at night, to fill in.

Examiner MADDEN: What did you have him doing?

The WITNESS: Helping and inspection and so forth, little things like changing spark plugs and adjusting *breaks*, and we have a routine inspection, listed as No. 1, covering spark plugs and *breaks* and windshield wiper, and they are set up in mileage form, covering the different things that they are supposed to do in each inspection.

Here was one complete job that he started on February 20th, 1936.

By Mr. LYNCH:

Q. What kind of a bus was it? A. It was a White, a model 65A.

Q. What was he supposed to do? A. Line the *breaks*.

(831) Q. What about that now? A. We had to take the job down the next day. He left the oil cells out, and he had the cams in wrong, and that was an inefficient way of doing the job.

Q. Would any ordinary mechanic be able to do that job without having this faulty condition that you have indicated?

Mr. BLUM: I object to that—"would any ordinary mechanic"—

Examiner MADDEN: You may answer it.

The WITNESS: The man that would know what it was all about would do the right kind of work, and he wouldn't leave parts out, if he took the job down.

Mr. LYNCH: Is there anything else about him that you haven't told us about?

The WITNESS: As I said, at the first, in first answering these questions, we have a regular inspection period, and there is what is known as a No. 1 Inspection,

that is supposed to take place, and that is the responsibility of the night crew, and if there is any other work to be done, like what kind of major work, if they can do it, to do it, or to leave that coach lay over for the next day, and specifying the number of the inspection, and the number of the coach.

Sometimes you will get slips and you won't get that information, and you are continually repeating and talking to them about putting the number of the coach on
(832) the job that they work on, and those that they lay over, so that you can have some intelligent way of checking back on the repairs of the ones that did the repairs, and they will on some jobs put the coach numbers on, and No. 1 inspection, and No. so and so, and the next time they won't put them down, and you have to just keep after them all of the time, and you talk to them one day, and the next day you have to go over it again.

Examiner MADDEN: Are you talking about Mr. Miller?

The WITNESS: Yes.

Examiner MADDEN: I don't understand what that has to do with Mr. Miller.

By Mr. LYNCH:

Q. You have certain records that are supposed to be kept? A. Yes. We keep these for six months.

Q. And the records are supposed to indicate the number of the coach, and what particular kind of job was on it, or a No. 1 job to do certain mechanical features, and he could check over the coach and wouldn't put the number of the coach or what was done on it—is that correct? A. Just "inspection" but wouldn't tell whether it was No. 1 or some other repairs.

Q. Did that happen many times? A. Here is a full two months.

(833) Q. Did it happen many times or not? A. I haven't counted them.

Q. Just tell us if it happened many times. A. It is frequent.

Examiner MADDEN: Are those slips all related to Mr. Miller's work?

The WITNESS: Yes, I just got his time reports.

Examiner MADDEN: So that all of those relate to his work.

The WITNESS: Yes.

By Examiner MADDEN:

Q. Is there anything on those slips to indicate whether the work which he did was properly done or not? A. Here, only my own notation.

Q. What notations are there on here? A. On that one job, I made a note of that because we had to take that down the next day.

Q. Is that the only one? A. That is the major job, and that was one of the biggest jobs, but we had a lot of repeats like replacing things in the morning.

Q. Where are those, how are those indicated? A. These are time cards, and we keep them on record, and if the man makes an inspection of No. 1 on a coach, and adjusts the *breaks*, and if we got a service call in the morning, that there are no *breaks*, and we have to send another man out, we would have a comparative check (834) on the time slips and keep the record that way, and we have to go back to it.

Q. You say that you did have such occurrences with respect to Mr. Miller? A. Yes.

Q. Where is the record of it? A. I would have to bring them over here, and the rest of the time slips to check back on these other jobs, but the reason that it would be hard to do, is that he has got the job of the inspection of the buses, and it doesn't specify the bus that they work on, and that is on the bulletin board, that they are supposed to be taken care of that way. Do you want to see them?

Q. Now, with reference to those slips, I understand that they show one faulty piece of workmanship, with reference to the repair of these *breaks*. A. That was a major sort of repair. The rest of it is inspection work at night, and they are not supposed to do much repair work.

Q. And he worked at that job for how long? A. Nine hours.

Q. For how many weeks or months. A. From September 23 until March 5, that is seven months.

GEORGE WILSEY.

Q. And I take it that if he didn't mark on his slips from January 1st to March, if he didn't mark the num-
(835) bers of the buses, he probably didn't mark the numbers of the buses in the months of last year, that he worked, did he? A. Some he did, yes, and some he wouldn't. You see, there are some cases where he did mark them, and other cases where he just put nine hours inspection of buses, and that is the catch.

Q. Do you claim that one of the things that he was discharged for was this failure to mark on these slips? A. It had bearing on the light of the inefficiency. That was one of the things.

Q. And that had gone on persistently for over all of the months that he worked for the company? A. Yes.

Q. And had it been called to his attention, or not? A. I called it to Joe Harmon's attention.

Q. You don't claim to know whether he ever called it to Mr. Miller's attention or not. A. All those instructions are on the bulletin boards with the time cards all typewritten out just the way that they are supposed to be filled out. We have a bulletin board, with all of the instructions for the operation and so forth of the garage.

Q. And your night foreman never saw to it that that was done? A. No.

(836) Q. Is he still there? A. No.

Mr. LYNCH: He is one of the complainants here, too.

Examiner MADDEN: Now, the question is with reference to this: Did you discharge him for union activities or did you discharge him for something else, and you don't give us much help on that. What do you say you discharged him for?

The WITNESS: He was in line right along, because I was trying to replace him, and checking up on other men and putting them on the list for some time.

Examiner MADDEN: From what time?

The WITNESS: I should say about the middle of January.

By Examiner MADDEN:

Q. What? A. About the middle of January.

Q. You said right after he got started. A. Right after he got on night work, Joe told me, my night foreman, that he had to have a better man, and the man wouldn't pick his work out, and you would have to almost take his hands and lay them on the work.

Q. Who was that night foreman? A. Mr. Harmon.

Q. And he is a complainant in this case? A. Yes.

Q. Was Mr. Miller's testimony about his pay, that (837) his pay was *was* high as compared with the other men? A. No, we always, on account of the night work, most of them don't like the night work, and that is another thing—you have to have some kind of little inducement there to get them to work nights.

Q. You mean that anyone who did the job that he did at night would have gotten that pay, thirty dollars a week? A. Yes.

Q. Had you ever had any complaint about his work in the day time? A. Well, he worked with me in the day time for a while, and we would have to put him on the work and watch him closely to do the work.

Q. He worked for you? A. Yes, in the day time.

Q. You are in personal supervision? A. Yes, I work myself.

CROSS EXAMINATION.

By Mr. BLUM:

Q. Isn't Mr. Frederick the day foreman? A. Yes, he is the day foreman, and I work myself.

Q. And didn't you testify at the previous hearing that you depended entirely upon both your foremen to direct the work with the men? A. Yes.

(838) Q. Then Mr. Miller when he worked in the day time was under the supervision of Mr. Frederick, and not under your supervision? A. Yes.

By Examiner MADDEN:

Q. Now, when he was changed from day work to night work, did you, was that your move, or did you make that change? A. Yes.

Q. Why did you do it? A. Well, I didn't have anyone at that time that would go on night work, and I had some older men, and they just wouldn't take night work,

and they said, "I don't want it", and that is something else, and they just refused to take it.

By Mr. BLUM:

Q. Do you recall Mr. Arnold's testimony that day work was a reward to the men, of seniority, and things like that? A. Yes.

Q. He testified that day work was a reward? A. I wasn't here to hear all of the testimony.

Examiner MADDEN: That is perfectly consistent with what he is saying now.

By Examiner MADDEN:

Q. So you directed that he be put on this night work? A. Yes.

Q. And was it immediately after he went on night (839) work that he became night foreman, for a time? A. That night foreman, what he calls night foreman, is one night a week the one man is off and the other man carries on, and when the regular foreman is off that man would carry on.

Q. Well, for that night when he is the foreman, of course, he has a very large responsibility, does he not? A. Not as much as week-days, because on Sunday we run a Sunday schedule, and they always changed and make that break on Saturday night, so that gives you practically all of the trippers are in.

Q. But at any rate the faulty or careless inspection would be a very dangerous thing, would it not? A. Yes, if anything important would turn up.

Q. Which is what an inspection is for. A. Yes.

Q. To find if something has turned up. A. Yes. But they have seventy-two extra coaches that you can choose from for the Sunday schedule.

Q. But unless you inspect and find something wrong, you don't have occasion to choose anything else. It could hardly be the type of person who couldn't find anything by himself, and you would have to lay his hands on the work before he could do it, and have that large respon- (840) sibility for the safety of the buses. It seems to me that if that is the kind of man that you have here, that somebody was in very grave fault in giving him that responsibility. There is much talk about the fact that unless you can arbitrarily hire and fire whom you please,

why your wives and children are not safe in riding on the buses, and yet you come here and tell us that you carry a man along and have him in sole charge of this shop, and the inspection of the buses, when your experience over the past several months has been that he can't see anything, and that until you or some other supervisor lays his hands on the work, he doesn't know it is there to do. Now, frankly, there is something wrong about this set-up.

RE-DIRECT EXAMINATION.

By Mr. LYNCH:

Q. How many mechanics do you have at night, Mr. Wilsey? A. We have—

Q. I mean strictly mechanical work. A. We did have two, but we have made a change.

Q. Now, at the time when Mr. Miller was working, you had two mechanics? A. Yes.

Q. So that when the foreman went, one of those mechanics would be put in charge over the washers and
(841) cleaners and greasers and so forth? A. Yes.

Q. And that would be on what night? A. Sunday, or Saturday night.

Q. And that is the slowest night of the week? A. Yes.

Q. And the night which requires the least amount of initiative? A. That is right.

Q. And ability? A. Yes.

Q. And Mr. Miller was that foreman for a part of the time while he was there? A. Yes.

Q. And that is one night a week? A. No, every other week.

Q. Twice a month? A. Yes.

Q. For how long a period of time was it, do you know? A. Well, twelve hours that night.

Examiner MADDEN: What is the rest of that inspection. You are talking about the washing and greasing and cleaning and so forth, but what else is there to it?

The WITNESS: The No. 1 inspection includes the windshield wiper, and the headlights, and the *breaks*, and motor skipping, or missing, and knocks in the en-
(842) gine, and we made the No. 1 inspection as simple

as we could, because a man that gets in the bus and starts his engine up and right away he can turn his engine on and check his engine, and go over his bus and try the *breaks*, and try his hand *break*, and that is particularly what the No. 1 inspection calls for, and to see if there is any noise, and if there is any trouble it is supposed to be put on the rack and be checked over.

Examiner MADDEN: And it would be checked over by the same people?

The WITNESS: Yes.

RE-CROSS EXAMINATION.

By Mr. BLUM:

Q. This slip that you say is the time card, February 20th, 1936, now, is in Mr. Miller's handwriting, and it is marked "*breaks*, 134" is that right? A. That is right.

Q. And it is signed by him? A. Yes.

Q. How do you know then, since his time card carries his work on the *breaks*, that he worked on these other things which you said were carelessly done. A. That is all that there is on there, just that one job, nine hours.

Q. He worked on the *breaks* for nine hours? A. Yes.

(843) Q. Is that your handwriting? A. Yes.

Q. Why did you write on that card, cams and rolls, and left out oil cells? A. That is what was wrong.

Q. He didn't leave that job in that condition, is that it? A. Yes, he went around looking for the oil cells in that job.

Q. You left us with the impression before that Mr. Miller had done the job in that careless manner, you didn't mean that, did you? A. Yes.

Q. That Mr. Miller had left the job in that condition? A. Yes, because the oil cells was outside in the morning, and he didn't know where they went to, and we found all of these other things wrong with the job.

Q. How would you know from this sheet whether or not Mr. Miller was responsible for leaving that in that condition. A. Because he was the man who went around, and he was the only man who worked on the job.

Q. And his time shows that he worked on the *breaks*. A. Nine hours that is a long while for a set of *breaks*.

Examiner MADDEN: Will you explain a little more carefully, now, about this faulty job. These were rear wheel *breaks*?

(844) The WITNESS: Yes, only two wheels.

By Examiner MADDEN:

Q. And they were re-lined? A. Yes.

Q. And then— A. He didn't re-line them, as the shoes and stuff were all lined, and he had the shoes lined, and you don't have to put the lining on. The lining is already riveted on.

Q. But he had to take off the old shoes, and put these on? A. Yes.

Q. What was the thing that he left out or left undone? A. The oil seals, and he had the cams—

Q. Are those washers? A. Those are seals that go inside to keep the grease from going into the *breaks*.

Q. And they are felt washers? A. Leather and felt, two types.

Q. And those were left out entirely? A. Yes.

Q. Well now, how soon after that job was finished, was it torn down again? A. The next morning.

Q. And how did it happen that you had it torn down? A. The oil seals were lying on the floor, and we (845) went right back to the job again, with the day crew.

By Mr. BLUM:

Q. You had definite knowledge that Mr. Miller was responsible for that situation, did you? A. Yes.

Q. What other knowledge did you have aside from the time cards which said that he worked on that bus? A. Well, the men in the shop came around and told me about it, and they said, "Well, there is a swell job", and they told me who done it.

Q. Did the men in the shop tell you? A. That is the only time that I had on that job, on that *break* job, was his time.

Q. That is, in going through your files, you find that on that date, Mr. Miller had worked on the *breaks* of that bus, and you assumed that he did that other job carelessly, is that true?

Examiner MADDEN: I don't think that you operate a repair job on the basis of the hearsay rule, particularly, you have got to get your information where you can, and what else would you have him infer from the fact that the record shows that?

Mr. BLUM: What I am trying to get at is this: That the statement that Mr. Wilsey is making so far as to show that Mr. Miller was fired for inefficiency, and the only evidence so far of inefficiency that he has shown, (846) is this particular statement that he has here, on the part of Mr. Miller.

Now, from the testimony as I gather it, he has no definite knowledge that Mr. Miller was responsible for that situation, but assumed that—

Examiner MADDEN: His testimony is that the records show that Mr. Miller was the man and the only man that worked on those *breaks*. Now, you may believe his testimony or disbelieve it, but that is what he testified to.

By Examiner MADDEN:

Q. That occurrence was when? A. On February 20th.

Q. And Mr. Miller was discharged when? A. On March 5.

Q. Did you call his attention to that? A. Yes, he knew all about it.

Q. Did you call his attention to it? A. Not personally.

Q. Who did. A. Mr. Harmon, his night foreman, told me about it.

Q. Did Harmon tell you that he told him? A. No, but he should. I don't know whether he did or not, because he went around the next morning looking for the oil seals, because I came out there—let me make this clear. I come on the work at eight o'clock, and he leaves work at seven o'clock in the morning, and then I have (847) my other crew who tells me these things from the first morning they carry on, and we have what we call "over-riding shifts", so that a shift doesn't go all off at one time. We have a crew from seven to five, and from nine to—

Q. And your crew comes on? A. We have a running shift. We have from seven to five, eight to six, and nine to seven, and that is an hour over-lap, so that each man from the other shift—

Q. Who was the man that found these oil seals lying on the floor. A. I have one man in the shop now that knows about it.

Q. Do you know who it was that found them there? A. I believe it was—

Mr. LYNCH: If you know.

The WITNESS: I don't know, sir; not right off-hand. I can check back in the shop.

Examiner MADDEN: Do you know who it was that called the attention of someone else to that?

The WITNESS: They called my attention to it.

By Examiner MADDEN:

Q. Was the bus still there, with these seals lying beside the bus? A. Yes.

Q. Was there more than one on each wheel? A. There is more than one on each wheel, on the inside.

(848) Q. And that was called to your attention, and then you didn't speak to Miller, but you think that the night foreman spoke to him. A. That is his business, yes.

Q. Did you say anything then to the night foreman about getting rid of Miller? A. We have talked about that, sir.

Q. Did you talk about it then? A. I said just as soon as I could. I told the foreman at the time, "That is a pretty poor job", and he said, "I know it, but what are you going to do?"

Q. What did you mean by that? A. I said, "I will get you a good man just as soon as I can".

Q. And did you get a man? A. I was lining up all of the time and trying to get men that would know something about bus work, and it is kind of hard to get a man that knows that kind of work, and if you want to put a man on that after he has worked a while at day, they won't go on nights, and they will quit before they will do it.

Q. Who was the man that you got for the place? A.

I haven't got his name right now. I injected a man in there, and I would have to get his name.

(849) Q. Is he a new man? A. I had started a man in around the last of February some time, and I haven't got that information here as to the exact time, but I had started another man, and I was explaining to the night foreman that I was going to put some extra men in to fill in because we had increased schedules, and everything else we had to increase the force.

Q. Did you discharge other men about the same time that you discharged Miller? A. Yes.

Q. How many? A. I don't know that right offhand. I haven't got that information here. I understood it was this morning only these two men that they had reference to.

Q. My recollection is that there were quite a number of men discharged, and I wondered if it was about the same time.

By Mr. LYNCH:

Q. With regard to the words "cams in wrong", does that refer to the relation with the *breaks*? A. Yes.

Mr. LYNCH: That is all.

Mr. BLUM: And that is in your handwriting?

The WITNESS: Yes.

Mr. BLUM: I have no further questions.

We would like to call Mr. Harmon in rebuttal.

(850) Whereupon JOSEPH R. HARMON was produced as a witness for and in behalf of the National Labor Relations Board, and having been previously duly sworn by the Trial Examiner, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. BLUM:

Q. What is your name? A. Joseph Harmon. Joseph R. Harmon.

Q. Now, Mr. Harmon, you were the night foreman

at the Washington, Virginia and Maryland Coach Company? A. Yes.

Q. Now, did Mr. Miller work under you at any time? A. Yes.

Q. Did you at any time tell Mr. Wilsey that Mr. Miller was so inefficient that you wanted another man in his place? A. I can't recall that, no.

Q. Was he a good mechanic? A. Just about as good as any I had, in the eight and a half years.

Q. And was he one of the highest paid mechanics there?

Mr. LYNCH: That is a matter of record.

Mr. BLUM: I will withdraw my question.

By Mr. BLUM:

Q. Do you know anything about this job on February 20th, that you have just heard discussed? A. The (851) 134 bus, yes.

Q. Do you know whether or not Mr. Miller worked on that bus? A. He did, I put him on it.

Q. Was it left in the condition that Mr. Wilsey described. A. He didn't finish it up. We left it on the rack, and told Mr. Frederick about it the next morning.

Q. Was his failure to finish it a neglect, or was he ordered to stop working on that bus? A. We didn't have the parts to finish it, I think that there were some slack adjuster guides left off, and they were worn, and we didn't put them back.

Q. And that was because the parts weren't available to repair it. A. That is right.

By Examiner MADDEN:

Q. Had the bus been put together, and had the wheels been put on? A. The wheels were put on but they didn't have to come off. They don't have to come off to repair that bus—it was the slack adjuster guides.

Q. They would have to come off to put these oil seals on? A. There were no oil seals of the bus left off, and the slack adjuster guides were a little washer where you adjusted the *breaks*, and we put it on the rack, and the (852) bus didn't go on the run that morning, and we put it on the rack and told Mr. Frederick about it.

Q. And you told Mr. Frederick about it? A. Yes.

By Mr. BLUM:

Q. Mr. Frederick is the day foreman, is that right? A. Yes, there are two little steel washers that adjust the slack, where you adjust your *breaks*. The cams and *breaks* and all were on, and the wheels were put on, and it was put on the rack for inspection.

By Examiner MADDEN:

Q. Did you have any conversation with Mr. Wilsey? A. Yes, we talked about the men.

Q. About replacing Miller? A. He never told me that he would replace him.

By Mr. BLUM:

Q. He never told you that he would replace you, either, did he? A. No.

Q. Until the time that you were fired? A. No.

Mr. LYNCH: I move to strike out the last question and answer.

Mr. BLUM: I will withdraw it.

CROSS EXAMINATION.

(853) By Mr. LYNCH:

Q. Mr. Harmon, there was some talk about this bus, wasn't there? A. Not with Mr. Wilsey and I, only Mr. Frederick and I. I pulled it on the rack and explained it to him, that Mr. Miller wasn't familiar with that type of work, and he had the cams off and he didn't put the spacer washers in about that, but he left the bus in there to be finished.

Q. You remember that distinctly? A. I pulled the bus over that night myself, with the *breaks* turned over, and locked down on the bridge.

Q. How long had he been working on that bus that night? A. Well, he had to re-line the *breaks*, and pull the slack adjusters off, and—

Q. How long did he work on the bus, Mr. Harmon? A. I judge about seven or eight hours.

Q. The lining is already on the shoe, isn't it, for these buses? A. Yes.

Q. And isn't it a fact that the oil seals were not put

back? A. He never had any reason for pulling the oil seals off. And the oil seals are made in the hub.

Q. That is all right. Is it a fact that the cams were (854) put in wrong? A. No, sir, not to my knowing. He never had the cams out of the bus.

Q. He never had them out? A. No.

Q. Is that right? A. That is right.

Q. But you did talk to Mr. Frederick about it? A. Yes, sir, and you know that later there was talk back to you about the fact that it was an inefficient job, isn't that true? A. Well, the man wasn't familiar with the *breaks*, that is the first job that he ever had done.

Q. I know that, but isn't it a fact that the next night when you came on, that there was a conversation there about the fact that the job was not done properly—isn't that correct? A. Well, probably yes, as far as that is concerned.

Q. And that is why you know about the job, because it was specifically called to your attention, isn't that correct? A. That is right.

Q. Now, you talked to Mr. Wilsey about this man, hadn't you? A. Well, we probably talked it over, or we talk about first one thing and then another.

Q. Isn't it a fact that you would rather have another (855) man, more familiar with bus work? A. All I ever had was no better than Mr. Miller.

Q. I am asking you if you didn't want a better man than Mr. Miller? A. I wanted more help, that is what I asked for.

Q. Didn't you ask for a better man, in substance? A. I can't say that I did ask for a better man, no.

Q. You asked for more men? A. Yes, and more help.

Q. You asked for a different man? A. I left that to Mr. Wilsey.

Q. That is all.

Mr. BLUM: That is all that I have.

You won't have any objection to this, Mr. Lynch. I have a list that has been given to me of what these men have earned since their discharge, and I want to put it in the record.

Mr. LYNCH: We have asked them about that, and that is objected to.

Mr. BLUM: I just received it, and the amount of money these men have earned since their discharge.

Examiner MADDEN: You are talking now about which men?

Mr. BLUM: All of these men in both hearings.

At the previous hearing, we didn't have that information of how much the men had earned from the time of discharge to the date of the hearing. The information (856) has come to me now, and I don't think, or I thought that the respondent would be very anxious to have it in the record.

Mr. LYNCH: I don't think that the Board will ever order this company to repay these men, and if they do we will have to take whatever it is. I submit, may it please the Examiner, that we are going to be bound by it, but the men may have earned more money, and this is a statement by somebody, we don't know who it is, relative to certain men as to how much they have earned.

Examiner MADDEN: All right.

Mr. LYNCH: Now, the Board will have to know, that they are going to restore these men, then it would have to know how much they have earned, because the Board certainly isn't going to be paying them while they are working, and the record shows that many of these people are actually working.

Examiner MADDEN: Your notion is that we will find out as best we can?

Mr. LYNCH: I think first of all, that the Board would never get to the point where they will ever have to talk about that, but if it does, I don't know what the policy of the Board is or whether it has a policy on that point or not, but certainly the Board isn't going to order men restored with full pay, when the men may have been working somewhere else. That certainly—

Examiner MADDEN: That is quite true, if we know it.

(857) Mr. LYNCH: We have the information here, and it is very easy to get an affidavit from the men as to how much they have earned. This is up to date, and many of them may be working right along, and assume that the Board delays the decision for another month and a half, and these men are working as many of them are working—

Examiner MADDEN: Now, please don't get the impression that I am censoring you or anything of the kind. I am simply asking you to take a position with reference to this offer of testimony.

Now, I haven't seen it, and I don't know what should be done about it, but you object to its admission.

Mr. LYNCH: I object to it on the ground that it should be done this way. It is done apparently for the purpose of having a computation before the Board, and in the event the men are restored, and that they are ordered back with pay, that this should be deducted. Isn't that the purpose of it?

Mr. BLUM: Yes.

Mr. LYNCH: The time to do that is if the Board ever does come to such a conclusion, which I submit it never will, then the time to do it is then, and to go to these men and make them submit under oath what they have earned, and then of course the Board will have that opportunity.

Mr. BLUM: I withdraw the offer, if Mr. Lynch objects to it.

(858) Mr. LYNCH: My objection is on that point only, and not that it would be material before the Board, but not at this time.

Examiner MADDEN: The hearing is then closed.

(Whereupon, at twelve o'clock, the hearing adjourned.)

(860) **EXHIBITS.**

(Memo. of Clerk: The exhibits are omitted from the printed record in accordance with the stipulation of counsel.)

(1013) **DECISION.**

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the matter of

Washington, Virginia and Maryland Coach Company, a Corporation
and
Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division No. 1079, et al.

Case No. C-63.

STATEMENT OF THE CASE.

On March 5, 1936, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, hereinafter called Local No. 1079, filed with the Regional Director for the Fifth Region a charge that the Washington, Virginia and Maryland Coach Company, Clarendon, Virginia, hereinafter called respondent, had engaged in and was engaging in unfair labor practices prohibited by the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act. A supplemental charge was filed on March 10, 1936. On March 11, 1936, the National Labor Relations Board, by the Regional Director for the Fifth Region, issued its complaint against respondent. The complaint, and notice of hearing thereon, were duly served upon respondent and upon Local No. 1079 on March 13, 1936.

The complaint alleges that respondent discharged and refused reinstatement to William H. West, H. M.

Hall, Charles O. Magaha, Stanley F. Smith, R. C. Stanton, W. A. Crissman, Joseph R. Harmon, George Bell,[1] Theodore W. Frederick, Joseph A. Garrison, Lawrence Chase,[2] Robert T. Smith, Edward Moore,[3] George Birch, C. McCauly,[4] Joseph McDonald,[5] Harry F. Gildart, James Atwell, Roy Miller and Philmore W. Frederick, for the reason that they, and each of them, joined and assisted a labor organization and engaged in concerted activities with other employees of respondent for the purpose of collective bargaining and other mutual aid and protection, and that respondent had thereby engaged in unfair labor practices affecting commerce, within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act.[6] Respondent filed an objection to the jurisdiction of the Board and a motion that the complaint be dismissed on the ground that the Act is unconstitutional. Without waiving its objection to the jurisdiction of the Board, respondent filed an answer to the complaint admitting the allegations concerning its incorporation and admitting that it owns and operates motor bus transportation lines for the transportation of passengers and express for hire from points within the District of Col- (1014) umbia to points within the State of Virginia, and from points within the State of Virginia to points within the District of Columbia, but denying that it now operates any motor bus transportation line in the State of Maryland. Respondent's answer further admits the allegations that it discharged and refused reinstatement to the persons named in the complaint and each of them, but denies the allegations with respect to the unfair labor practices.

On March 17, 1936, the Board directed that the proceeding be transferred to and continued before it, thereupon assuming jurisdiction of the proceeding pursuant to Article II, Section 35 of National Labor Relations Board Rules and Regulation—Series 1.

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[1] Complaint amended at hearing to read "George Beall".
[2] Complaint amended at hearing to read "Lawrence J. Chase, Jr."
[3] Complaint amended at hearing to read "Everett Moore".
[4] Complaint amended at hearing to read "Clyde J. McCaulley".
[5] Complaint amended at hearing to read "Joseph McDonough".
[6] Complaint amended at hearing to include the name John Henry Dove.

Pursuant to notice thereof, John M. Carmody, Trial Examiner duly designated by order of the Board, conducted a hearing on March 23, 24, 25 and 26, 1936, at Washington, D. C. Respondent, appearing by counsel, participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties. Respondent's objection to the jurisdiction of the Board was overruled by the Trial Examiner. At the conclusion of the Board's case respondent made a motion to dismiss the complaint on the ground that the evidence did not support the allegations in the complaint. The Trial Examiner denied the motion. The rulings of the Trial Examiner are hereby affirmed.

On April 25, 1936, the Board issued and duly served notice of a further hearing to be held on May 1, 1936, at Washington, D. C., and on April 27, 1936, issued and duly served notice of postponement of the hearing to May 2, 1936. Pursuant to the notice thereof, J. Warren Madden, Trial Examiner duly designated by order of the Board, conducted a further hearing on May 2, 1936, at Washington, D. C. Respondent, appearing by counsel, participated in the hearing. Full opportunity to be heard, to cross-examine witnesses and to produce evidence was afforded to all parties. Counsel for the Board made a motion to dismiss the complaint as to the allegations of discrimnatory discharge of Stanley F. Smith, R. C. Stanton and Harry F. Gildart. The motion was granted by the Trial Examiner. Respondent objected to the holding of a further hearing and the introduction of further testimony on the ground that the hearing was closed on March 26, 1936. The Trial Examiner overruled respondent's objection. The rulings of the Trial Examiner are hereby affirmed.

Upon the evidence adduced at the hearings and from the entire record now before it, the Board makes the following:

FINDINGS OF FACT.

I. *Respondent and Its Business.*

1. Respondent, Washington, Virginia and Maryland Coach Company is *had* has been since 1926, a corporation organized under and existing by virtue of the laws of the State of Virginia. Its main office and garage are located at Clarendon, Virginia, and it has an office and waiting room at 619—12th Street, N. W., Washington, D. C.

Respondent operates buses on regular schedule between points within the District of Columbia and points within the State of Virginia for the transportation for hire of persons, United States mail, newspapers and occasional express shipments. Respondent formerly operated a bus line between points within the State of Maryland and points within the District of Columbia, but this business was abandoned in 1930. However, at the present time it occasionally operates buses for the transportation of persons between points within the District of Columbia and a race track within the State of Maryland.

(1015) 2. Respondent operates its bus line under an interstate permit granted it by the District of Columbia and an intrastate permit granted it by the State of Virginia. In other words it is not permitted to carry persons or property for hire between two points, both within the District of Columbia, but is permitted to carry persons or property for hire between two points, both within the State of Virginia. Except in the case of the buses operating between the District of Columbia and the race track in the State of Maryland, all persons or property picked up within the District of Columbia must be carried into the State of Virginia. More than fifty per cent of the passengers picked up at points within the State of Virginia are carried to points within the District of Columbia.

3. Respondent carried approximately 1,800 passengers per day when it began operations in March, 1926. From March to December, 1926, inclusive, it carried a

total of 882,272 passengers. Respondent's business increased considerably within the next three years; during the year 1929 it carried a total of 1,694,302 passengers. In 1933 the total number of passengers carried dropped to 1,571,596. However, in 1935 respondent carried a total of 2,436,236 passengers; and from January 1 to March 22, 1936, inclusive, respondent carried a total of 612,985 passengers.

United States mail is carried on respondent's buses between Washington, D. C., and points within the State of Virginia. This mail is carried under contract which between January, 1935, and February, 1936, inclusive, yielded respondent an income of $546.75. Newspapers are carried on respondent's buses between Washington, D. C. and points within the State of Virginia. These newspapers are also carried under contract which between January, 1935, and February, 1936, inclusive, yielded respondent an income of $588.15. All United States mail and newspapers picked up in Washington, D. C., are carried to points within the State of Virginia; and approximotely thirty percent of the United States mail picked up at points within the State of Virginia is carried to Washington, D. C. The record does not disclose what proportion of the newspapers picked up within the State of Virginia is carried to Washington, D. C., but it was testified to in behalf of respondent that the total amount of the newspapers picked up within the State of Virginia is comparatively small.

4. When respondent commenced operations in 1926 it owned nine buses and employed approximately 20 employees. It now operates a fleet of 48 buses, and employs approximately 80 men, 50 of whom are drivers, 27 of whom are employed at its garage, and three of whom are employed at its offices.

5. Respondent has applied for and received from the Federal Bureau of Motor Carriers, Interstate Commerce Commission, a certificate of convenience and necessity in accordance with the Motor Carriers' Act, 1935.

49 U. S. C. A. Chap. 8.
49 Stat. 543.

II. *Organization of Local No. 1079.*

6. Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, is a labor organization. Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America is affiliated with the American Federation of Labor. Local No. 1079 now has 59 members.

7. Approximately 24 employees of respondent met on February 24, 1936, at the home of Theodore W. Frederick, an employee of respondent, for the purpose of organizing a union. The group held its second meeting, also at Frederick's home, and received its charter from the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America on March 3, 1936.

8. This meeting took place at about 11:30 P. M. Joseph Arnold, Vice-President of respondent, appeared at the meeting wearing a bus operator's cap. Arnold (1016) read the charter being presented to Local No. 1079 by C. H. Clark, 4th International Vice-President, Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, asked questions concerning the union, and entered into the general discussion. Subsequently, West, Financial Secretary of Local No. 1079, arose and told Clark that he was talking to the Vice-President of respondent, the son of the President, Leon Arnold. Clark replied that he had not been aware of this, and asked Arnold to leave the meeting. Arnold asked if he could become a member of Local No. 1079. Clark replied in the negative, and Arnold then said that he would like to become an honorary member. Clark told him that he could not become an honorary member, and Arnold replied, "Well, gentlemen if that is the way you feel about it, I will leave."

Arnold testified that Frederick had invited him to attend the meeting. However, Frederick denied that he had invited Arnold to attend the meeting. Frederick further testified that he had never before seen Arnold wear a bus operator's cap. Arnold, in explaining his appearance in a bus operator's cap, said that he had been

unable to find his hat and the bus operator's cap was the first thing he picked up.

9. Harmon, a member of Local No. 1079, testified that when he returned to work at respondent's garage on March 3, immediately after the meeting, Wilsey, Superintendent of the garage, approached him and said that he was surprised to learn that he had joined Local No. 1079, and that Arnold would put his buses in a lot and burn them before he would recognize Local No. 1079. Wilsey asked Harmon if it would be possible for him to meet Clark, and both started toward Frederick's house. Before reaching Frederick's house several employees informed them that Clark had gone. Wilsey and Harmon were returning to respondent's garage when they met Leon Arnold, who was in an automobile. It was then some time after midnight. Harmon testified that Arnold stated he would not recognize a union. Wilsey testified that Arnold said that 'things wasn't like that when he was a boy and something like that, and he had to work for what he got, and he had to work his way up, and he believed in every man standing on his own feet;" and further testified that he did not hear Arnold say he would not recognize a union, but that Arnold mumbled and that he could not hear all that was said. Arnold denied saying anything about a union on this occasion; and further denied making any statement similar to that which Wilsey testified he had made. Subsequently, in answer to the question "If I tell you that Mr. Wilsey testified to that, was he mistaken", Arnold replied "No."

10. It was testified to in behalf of respondent that respondent first learned of the activity among its employees in connection with the organization of Local No. 1079, about February 27, 1936.

On February 29, 1936, Wilsey, acting in accordance with orders given him by Leon Arnold, inserted a notice for help wanted in a newspaper, The Washington Herald. Respondent received between 500 and 600 responses to the notice, from which some men were selected and given employment on or about March 5, 1936, at the time respondent discharged 21 of its employees, as hereafter related.

On or about March 1, 1936, respondent circulated the following pamphlet among its employees:

A Personal Message From
Leon Arnold
Washington, Va. & Md. Coach Co., Inc.
Arnold Operated

"Sometimes groups of individuals in a business organize themselves into cliques.

"Webster's definition of a clique is 'a narrow circle (1017) of persons associated by common interests; a small and exclusive set, or coterie; generally used in a bad sense.'

"The reason that the word clique is 'generally used in a bad sense' is that the small and exclusive set composing it usually thinks more of promoting the selfish interests of the clique than the collective interests of the organization.

"The members are more concerned in serving their own ends than in serving the customers of the business who provide them with employment and pay their wages.

"One sure way to acquire a poor standing, both in position and pay, in a business organization is to acquire a good standing in a clique."

Respondent has characterized both the appearance of the notice for help wanted on February 29, 1936, and the personal message from Leon Arnold on or about March 1, 1936, as merely a "coincidence." It contends that it had previously decided to discharge certain of its employees for inefficiency, and to employ new men. Respondent further contends that the "personal messages" had been distributed every Monday since October, 1935, that they are obtained in quantities from a firm in Chicago, Illinois, and that the message distributed on or about March 1, 1936, was the next one, in its logical sequence, to be distributed.

III. *The Unfair Labor Practices*

A. *The Discharges of March 5 and 6, 1936*

On March 5 and 6, 1936, respondent discharged 21 employees, all of whom were members of Local No.

1079. Six of them were bus operators; they were discharged on March 4. Seven of them were employed on the day shift at respondent's garage, and were discharged on March 5. The remaining eight comprised the entire night force working at the garage; they were discharged during the night of March 5 or early in the morning of March 6.*

The facts concerning each of the 18 discharged employees now involved in the case are as follows:

(1) *William H. West.* West had been employed by respondent two years and eight months as a bus operator. He is Financial Secretary of Local No. 1079. He was discharged by England, Assistant Manager of respondent, on March 4, 1936. West reported for work on March 4, 1936, and was told by the cashier that he was wanted at the office. Upon arriving at the office, he was told by England that "Your services are no longer required; take your traps, turn them in to the company right away." He was given no reason why his services were terminated.

England testified that his records showed that West had been involved in no accidents. England also testified that reports made by respondent's "spotter" Mason** showed that West failed to collect any fare from a passenger on December 6, 1935, and that on November 27, 1935, a passenger on a bus that West was operating deposited 10¢ in the fare box upon entering the bus at 15th & K Streets, N. W., Washington, D. C., but that, in (1018) violation of the rules, West failed to request an additional fare of 10¢ when the passenger left the bus at Falls Church, Virginia. England also stated he had received complaints by telephone concerning West, but no evidence was offered concerning the nature of the complaints or who had made them.

(2) *Herbert M. Hall.* Hall had been in the employ

*The complaint having been dismissed as to the allegations of discriminatory discharge of Stanley F. Smith, R. C. Stanton and Harry F. Gildart, these three discharges will not be dealt with.

**Mason was employed by respondent during the latter part of November and the first week in December, 1935, to ride respondent's buses and make reports to respondent concerning the conduct of its operators.

of respondent as a bus operator for two years and five months previous to his discharge. He is a member of Local No. 1079. Hall had worked about half of his run on March 4, 1936 when he was called into respondent's office at 2:55 P. M. England told him his services were no longer required. Hall requested the reason for his discharge. England stated he had "plenty of *resons*". Joseph Arnold was present and said, "Hall you are the first person that asked that question." England told Hall to go home and come back later. Hall returned to respondent's office later in the afternoon and received his pay. He again questioned England concerning the reason for his discharge, and England stated, "If you wasn't so damn dumb you would know why I am firing you; I am firing you for the same reason I am firing all of the rest of them." England testified that he made this statement to Hall because Hall's wife had talked with him concerning her domestic difficulties and had requested him to dismiss Hall.

A report of Mason's shows that on December 7, 1935, Hall complained to passengers on the bus he was operating concerning the small bus he was compelled to use on the route, and suggested that because of the large number of people using the bus the passengers should get together and see Arnold, and try to get a larger bus for the route. Shortly thereafter Leon Arnold reprimanded Hall for his action, but did not penalize him. He told Hall that up to that time his record had been "pretty good." England testified that Hall had no accident record.

(3) *Charles O. Magaha.* Magaha had been employed by respondent as a bus operator for two years. He is a member of Local No. 1079. Magaha reported for work on March 4, 1936, and was told that he was wanted at respondent's office. He went to the office and England told him his services were no longer required, and asked him to turn in his punch and "fare box covers", and get his pay. He was given no reason for the termination of his employment.

England testified that he talked with Magaha on several occasions before he was discharged concerning

Local No. 1079, and told him to "use his own head." England further testified that Magaha had been involved in 12 accidents in 1935 and one in 1936. Reports made by respondent to an insurance company at the time of each of these accidents are included in Board's Exhibit No. 7. These reports show that Magaha was involved in one accident in 1934, 11 in 1935, and one on February 17, 1936. Mason's report made on December 3, 1935, stated that Magaha's "fare box checked O. K." A similar report made by Mason on December 8, 1935, showed that a passenger had deposited 10¢ in the fare box upon entering a bus Magaha was operating, and that Magaha had failed to ask for an additional 5¢ when the passenger left the bus in a 15¢ zone.

(4) *W. A. Crissman.* Crissman had been employed by respondent as a bus operator for about six and one half years. He is a member of Local No. 1079. Crissman reported to the cashier at respondent's office at the end of his run on the afternoon of March 4, 1936, and was told that England wanted to see him. England informed him that his services were no longer required, but stated no reason why he was terminating his employment.

A report of Mason's shows that on November 30, 1935, Crissman failed to collect an additional fare of 5¢ from a passenger. England testified that during the previous 6 months he had received complaints concerning Crissman, but no evidence was offered to show the nature (1019) of these complaints or by whom they were made. Joy, a frequent passenger on the bus operated by Crissman, testified that on one occasion Crissman had refused to honor a transfer he had received from another driver, and on another occasion refused to issue to him a transfer to a Columbia Pike bus, but instead overtook the Columbia Pike bus, pulled up beside it, held out his hand and said "Hold your bus. I have got a passenger for you." Joy stated that "he made me go out before two bus-loads of people, and I felt like a fool • • •" Aside from Joy's personal feelings in the matter it would appear that Crissman was courteous and did everything possible to assist a passenger in this instance. Crissman testified that respondent prohibited its drivers from issuing or accepting transfers during rush hours.

(5) *Joseph R. Harmon.* Harmon had been employed by respondent for about eight and one half years as a mechanic at respondent's garage. He is a member of Local No. 1079. He was a working foreman on the night shift. He was discharged by Wilsey, Superintendent of the garage, on March 6, 1936. Wilsey testified that when he discharged Harmon he said "Go get it"; that Harmon replied, "I guess I am going on account of the union"; and that he told Harmon, "Well, you can figure it out that way for yourself." This conversation took place at about 5 A. M. on March 6, 1936. Harmon then went to respondent's office and received his wages from England. Harmon asked England, "What am I fired for, joining the union?" England replied, "No, just the way you went about it," and further stated that Harmon should have come to him for advice in the matter. England also told Harmon that he had always done good work and that he was sorry to see him go.

(6) *Joseph A. Garrison.* Garrison had been employed by respondent for about two years. He was employed as a bus washer on the night shift at respondent's garage. He is a member of Local No. 1079. Garrison was discharged by Wilsey early in the morning of March 6, 1936.

(7) *Everett Moore.* Moore had been employed by respondent one year and two months as a bus washer. He was employed on the night shift at respondent's garage. He is a member of Local No. 1079. Moore was discharged by Wilsey early in the morning of March 6, 1936.

(8) *John Henry Dove.* Dove had been employed by respondent for about one month as a bus washer. He was employed on the night shift at respondent's garage. He is a member of Local No. 1079. Dove was discharged by Wilsey early in the morning of March 6, 1936.

(9) *Robert I. Smith.* Smith had been employed by respondent about three years as a service man at respondent's garage. He was employed on the night shift. He is a member of Local No. 1079. Smith was discharged by Wilsey on March 6, 1936. Smith finished the night's work at about 6 A. M. on March 6, 1936, and went to the

wash room. Wilsey came in and told him to go to the office. Smith saw England at the office and received his wages. England stated, "You guys started something and I got ahold of it before it went far enough to amount to anything. If it had gone on it might have been too bad."

(10) *Clyde J. McCaulley.* McCaulley had been employed for about one month at respondent's garage. He is a member of Local No. 1079. He was employed to assist in the changing of tire chains during the cold weather. However, on or about February 25, 1936, he was given work as a mechanic with the night shift. McCaulley was discharged by Wilsey the night of March 5, 1936.

(11) *James L. Atwell.* Atwell had been employed about seven years as a bus greaser at respondent's garage. He was employed on the night shift. He is a member of Local No. 1079. Atwell was discharged by Wilsey early in the morning of March 6, 1936. Wilsey told Atwell to go to the office and get his money when he finished work. When Atwell went to respondent's office England (1020) said, "Jim, you have kept your work up good, and we never had any trouble with you." Atwell testified that England told him he was being discharged for going to union meetings. However, England denied making any such statement.

(12) *Roy Miller.* Miller was first employed by respondent in September, 1935. He was employed as a mechanic at respondent's garage, and was transferred from the night shift to the day shift on or about March 3, 1936. He is a member of Local No. 1079. Miller was discharged by Wilsey on March 5, 1936. Miller testified that during his conversation with Wilsey at the time of his discharge:

"I said, 'What is the matter, is my work not satisfactory?'

"And he (Wilsey) said, 'Perfectly satisfactory, and if it wasn't, you wouldn't be here two days.'

"And then I said, 'Well, what is the firing for?'

"And he said, 'What do you mean?'

"And I said, 'In other words you are firing me on account of the union,' and he said, 'Yes'."

However, Wilsey testified that when Miller asked him if he was being discharged because of the union, he made no reply, and walked away. Miller received his wages from England who gave him no reason why he was being discharged.

(13) *Theodore W. Frederick.* Frederick had been employed by respondent about seven and one half years. He was a working foreman on the day shift at respondent's garage. He is Recording Secretary of Local No. 1079. Frederick was discharged on March 5, 1936. At 5:50 P. M., March 5, 1936, Wilsey told him, "Frederick, I hate to give you this, because you have got to go." Frederick asked Wilsey, "Was it because of the union?" Wilsey replied, "No, it is because of the underhanded way you went about it." Wilsey also stated that he had been a member of a labor organization for eight years and it had not done anything for him, and told Frederick that he should have talked it over with him before becoming affiliated with Local No. 1079.

(14) *George Beall.* Beall had been employed about three months as a mechanic on the day shift at respondent's garage. He is a member of Local No. 1079. He was discharged by Wilsey on March 5, 1936. Beall testified that he asked Wilsey if he was being discharged because of the union, and that Wilsey replied "Yes"; that Wilsey asked him why he had joined the union without saying anything about it to him; and that Wilsey said he didn't see any sense in the union and furthermore the "Old Man" would not recognize a union.

(15) *Lawrence J. Chase, Jr.* Chase was employed as a painter's helper for approximately one year at respondent's garage. He was employed on the day shift. He is a member of Local No. 1079. He was discharged on March 5, 1936. After lunch on March 5, 1936, Wilsey told Chase to get his money. Chase received his wages from England. He was given no explanation concerning the reason for terminating his employment.

(16) *George Louis Birch.* Birch had been employed about seven and one half years as a mechanic at respondent's garage. He was employed on the day shift. He is a member of Local No. 1079. Birch was discharged

on March 5, 1936. At about 6:50 P. M. on March 5, 1936, Wilsey said to Birch, "There is a letter in the office for you." Birch went to respondent's office and England said to him, "Birch, sign this, and see if your money is all right * * * What does your wife think of this mess, (1021) and your losing your job?" Birch was not told why he was being discharged.

(17) *Philmore W. Frederick.* Frederick had been employed more than five years as a mechanic's helper at respondent's garage. He was employed on the day shift. He is a member of Local No. 1079. Frederick testified that on the morning of March 5, 1936, he was showing a union application blank to Kaylor and that England told him to put the application blank back in his pocket because he didn't have any business with a union application. Frederick further testified that he was discharged by Wilsey on March 5, 1936, at which time Wilsey told him he was being discharged because he had "one of those union applications in the office."

(18) *Joseph McDonough.* McDonough had been employed about one year as a body man at respondent's garage. He was employed on the day shift. He is a member of Local No. 1079. McDonough was discharged by Wilsey on March 5, 1936. After lunch on March 5, 1936, Wilsey told McDonough, "Go up in the office and get it. Your services are through." McDonough received his money from England. He was not told why his services were being terminated.

IV. *Conclusions Respecting the Unfair Labor Practices.*

12. The 18 discharged employees are all members of Local No. 1079, and include West, Financial Secretary, and Theodore W. Frederick, Recording Secretary. The fact that only employees of respondent who were members of Local No. 1079 were discharged indicates that respondent was attempting to weed out its employees who were active in union affairs.

The record clearly indicates that respondent has displayed a hostile attitude toward Local No. 1079. Leon Arnold, President of respondent, testified that a mechanic

by the name of Griffin was given employment in September, 1935, and that "Mr. Griffin was the one that sowed the seeds there first, with the day foreman and night foreman." Upon being asked what he meant by the phrase "sowed the seeds," Arnold replied "selling them the idea of the union." The record does not disclose the identity of Griffin; however, it is indicated that he was an organizer for the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America.

Respondent's attitude toward Local No. 1079 is further exposed through the statements of England and Wilsey at the time certain of respondent's employees were discharged; and the fact that Leon Arnold, on one occasion related to Magaha, Crissman and four other bus operators, certain unpleasant experiences he had had with a labor organization and attempted to dissuade them in their efforts to organize a union.

There is no question that respondent knew which of its employees were members of Local No. 1079. The employees freely discussed their membership both among themselves and with respondent's supervisors and officials. It has been brought out that Joseph Arnold appeared at the meeting of Local No. 1079 on March 3, 1936, the day before respondent began to discharge the members of Local No. 1079, wearing a bus operator's cap. Respondent was thus given an opportunity to observe the activities of its employees at close range. It is true that Joseph Arnold was well known to most of respondent's employees. However, Clark, 4th International Vice-President, Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, was not acquainted with him. In view of respondent's attitude toward Local No. 1079, we are convinced that Joseph Arnold appeared at this meeting on March 3, 1936, in order to obtain information concerning the activities of respondent's employees in connection with the organization of Local No. 1079, and that his appearance in a bus operator's cap was a deliberate attempt to conceal his identity. Thus, respondent, possessing a knowledge of membership in Local No. 1079, was enabled to deliver a well-directed blow at Local No. 1079 at the very outset.

(1022) Respondent contends that the timely appearance of the notice in a local newspaper for help wanted and the personal message from Leon Arnold was a "coincidence"; however, we are convinced that this was part of a plan carefully arranged and carried into effect by respondent. The general tenor of the message and its discussion of a "clique", leaves little doubt that respondent selected this particular message as being especially applicable to the situation then existing among its employees. It appears that respondent chose this method of discouraging membership in Local No. 1079, and advertised for help wanted with a view to getting rid of certain of its employees active in union affairs in order that it could thus permanently cripple Local No. 1079.

Respondent contends that the reports made by Mason in November and early in December, 1935, were unfavorable as concerned the four bus operators, and because of these reports and certain complaints it had received it discharged them. No evidence was offered concerning the nature of the complaints, who had made them or when they had been made, except in the case of Crissman. Joy testified concerning a complaint he had made to England concerning Crissman. This complaint was made in June, 1935, more than eight months before Crissman was discharged. The reports made by Mason disclosed that on one or two occasions, approximately three months before their discharge, West, Magaha, and Crissman had failed to collect fares from passengers, amounting to 5¢ or 10¢. The record clearly indicates that the buses are often crowded to capacity, and at such times conditions make it physically impossible for the operator to remember the exact amount deposited in the fare box by each passenger, and request an additional fare upon entering another fare zone.

England testified that he had no record of accidents in which West or Hall had been involved, and Crissman testified that he had not been involved in an accident for more than two years. Magaha was involved in 11 accidents in 1935, and one in February, 1936. Reports submitted by respondent to the United States Fidelity

and Guaranty Company in connection with each of these accidents show that Magaha could not have avoided any of them.

Magaha and Crissman testified that on or about February 28, 1936, Leon Arnold, Joseph Arnold and England talked with them and four other bus operators at respondent's office and asked each of the bus operators if they had joined Local No. 1079; that they and three of the other operators replied they were members of Local No. 1079; and that Leon Arnold related certain unpleasant experiences he had had with a union, and requested each to consider whether or not he would remain a member of the union, and inform respondent of his decision the next morning. The record does not reveal the identity of the other four bus operators. Magaha and Crissman did not comply with the request. Crissman testified that subsequently Leon Arnold asked him if he wanted to change his mind, and that he had time to reconsider, but that he replied in the negative. Leon Arnold did not deny making these statements.

Respondent contends that the 14 employees at its garage were inefficient and incompetent. England testified that the buses were not cleaned properly and that passengers had complained about the dirty condition of the buses, and that on several occasions passengers' clothes had been soiled. Garrison, Moore and Dove were employed as bus washers on the night shift, and Harmon was their working foreman. Respondent contends that they were responsible for the condition of the buses. However, the evidence shows that the unclean condition of the buses existed during bad weather in the winter months when it was necessary for Garrison, Moore and Dove to assist in the placing of tire chains on buses, and that they had no time to clean the buses.

Smith, Atwell and McCaulley were also employed on the night shift. Wilsey testified that Smith serviced the buses, i. e. filled the buses with gasoline and oil before they left the garage, and that buses had run out of gasoline on several occasions. Smith testified that only one such complaint had been made to him, about six months before his discharge. Wilsey testified that (1023) Atwell, who greased the buses, had a bad grease

record for the past six and one-half years. Wilsey's only explanation of this statement was that some bearings in the buses had been burned because of lack of grease, presumably months before Atwell's discharge. Wilsey further testified that he was told by the night foreman that McCaulley was a poor mechanic. Respondent has introduced no evidence tending to show the caliber of McCaulley's work or wherein he was inefficient.

Theodore W. Frederick was employed as a working foreman at respondent's garage. He was Recording Secretary of Local No. 1079, and it was at his house that meetings of Local No. 1079 were held. Respondent has offered no evidence to show that Theodore W. Frederick was incompetent or inefficient. On the contrary the record indicates that Theodore W. Frederick was a conscientious and diligent worker during the seven and one-half years he was employed by respondent. At the time of his discharge respondent was paying him the next to the hightest wages paid to any mechanic in its garage. Philmore W. Frederick, brother of Theodore W. Frederick, was employed as a mechanic's helper. Wilsey testified that Philmore W. Frederick became "dominant" during the two or three months previous to his discharge. However, no instances of insubordination were shown.

Miller was employed as a mechanic on the day shift at the time he was discharged, having been transferred from the night shift several days before. Wilsey testified that Harmon, the working foreman on the night shift, had told him that Miller was not competent and that he wanted a better man. However, Harmon testified that he could not recall making such a statement to Wilsey, but that he did tell him he wanted more help for the night shift. Wilsey further testified that Miller was inefficient, and, citing an instance of his inefficiency, stated that on February 20, 1936, Miller was given a job relining the rear wheel brakes of a bus, and that he failed to insert the oil seals and installed the cams incorrectly. However, Harmon testified that during the eight and one-half years he had worked for respondent, Miller was as good a mechanic as he had ever had. Harmon further testified that Miller did not finish the job assigned

to him on February 20, 1936, because the necessary parts were not available, and that Miller had not failed to insert the oil seals and had not installed the cams incorrectly. It is shown that respondent had confidence in Miller's ability, in that when Harmon was off, one night every two weeks, Miller acted as working foreman, a position of responsibility.

Beall and Birch were also employed as mechanics on the day shift. Wilsey testified that Beall had little experience and was a slow worker, and that "Birch was coming along pretty good * * * and he had just got to a position the last two or three months * * * we had to watch him very closely, and he would destroy almost as much as he would make." Nevertheless, neither Beall nor Birch were ever reprimanded or have ever received any complaints concerning their work during the entire course of their employment.

Respondent has offered no evidence to show that Chase or McDonough were incompetent or inefficient.

The record clearly does not sustain respondent's contention that the 18 employees were discharged because of incompetency and inefficiency. On the contrary respondent's apparent hostility toward Local No. 1079, and its conduct in attempting to discourage membership in Local No. 1079; the fact that none of the 18 employees were told that they were being discharged because of incompetency or inefficiency; and the fact that all of them were discharged over a period of two days immediately following the organization of Local No. 1079, and at once replaced by new employees, convinces us that respondent looked only toward their union membership and activity in terminating their employment.

We find that respondent has discriminated in regard to the hire and tenure of employment of William H. West, Herbert M. Hall, Charles O. Magaha, W. A. (1024) Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, for the purpose of discouraging

membership in the union, and that by such acts, respondent has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

V. *Effect of Unfair Labor Practices on Commerce.*

13. Respondent is engaged in the operation of an interstate bus transportation system. Its bus operators are actively engaged in the operation of instrumentalities of interstate transportation. The operations conducted at respondent's garage are an integral part of the operation of this interstate transportation system. Buses carrying passengers and property in interstate transportation are serviced and made ready for their scheduled runs at respondent's garage. Such servicing is essential to the safe and regular functioning of the system. Thus respondent's garage is an integral part of the operation of instrumentalities of interstate commerce and respondent's employees, employed at its garage, are actively working upon instrumentalities of interstate transportation and are engaged in operations in the course and conduct of interstate transportation. Therefore, respondent's conduct as set forth in the findings of fact above, and each item of such conduct, occurred in the course and conduct of the operations of instrumentalities of interstate transportation and affected not only employees engaged in the operation of instrumentalities of interstate transportation, but also employees engaged in operations in the course and conduct of interstate transportation and on instrumentalities of interstate transportation, and hence occurred in the course and current of transportation within the District of Columbia and between the District of Columbia and the States of Virginia and Maryland.

As we said *In the Matter of Pennsylvania Greyhound Lines, Inc.*, Case No. C-1,

"Interference with the activities of employees in forming or joining labor organizations results in strikes and other forms of industrial unrest which in the field of transportation have the effect of impairing the safety and efficiency of the instrumentalities of such transporta-

tion. About 50% of the strikes and lock-outs that occurred in the motor transportation industry from January, 1935, to July, 1935, inclusive, involving 32,782 employees and 162,721 man-days of idleness, arose over the issue of employee organization. It is common knowledge that in the industrial scene numerous and prolonged strikes have resulted from denial by employers of the rights now guaranteed by Section 7 and from their interference with employees attempting to exercise such rights ((1934) 39 Monthly Labor Review No. 1, p. 75, Table 9). The Board cannot be blind to such knowledge or fail to realize the disruption of commerce that results from such strikes and unrest. The motor transportation industry has achieved an important place in the transportation systems of this country and it is the desire of Congress to prevent the interference with transportation and the impairment of the safe and efficient operations of its instrumentalities that results from such strikes and unrest. It is significant that, unlike the parallel legislation in the railway field, there are no provisions for collective bargaining and employee freedom of organization and representation in the recent Motor Carrier Act of 1935, imposing federal regulation of interstate motor transportation. The omission was (1025) succinctly explained on the floor of the Senate by Senator Wheeler, Chairman of the Committee on Interstate Commerce, on the ground that the Wagner Act then before Congress would cover the field of motor transportation and that therefore such provisions need not be incorporated in the Motor Carrier Act (Cong. Record, 74th Congress, 1st Session, Vol. 79, p. 5887.)"

14. We therefore conclude on the basis of findings of fact 1 to 5, inclusive, and finding of fact 13, that: (a) the operations of respondent occur in the course and current of transportation within the District of Columbia and between the District of Columbia and the States of Virginia and Maryland, and are an integral part of the operations of the instrumentalities of such transportation; and (b) on the basis of experience in the motor bus transportation and other industries, respondent's conduct, and each item of such conduct, burdens and obstructs commerce and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce, by im-

pairing the efficiency, safety, and operation of instrumentalities of commerce.

CONCLUSIONS OF LAW.

Upon the basis of the foregoing findings of fact the Board makes the following conclusions of law.

1. Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, is a labor organization, within the meaning of Section 2, subdivision (5) of the Act.

2. By its discharge and refusal to reinstate William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, and each of them, for the reason that they and each of them joined and assisted Local No. 1079, respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (1) of the Act.

3. By its discharge and refusal to reinstate the persons aforesaid, as set forth in paragraph 2 hereof, and each of them, respondent did discriminate and is discriminating in regard to hire and tenure of employment of said persons and each of them, and did thus discourage and is thus discouraging membership in Local No. 1079, and by all of said acts and each of them did thereby engage in and is thereby engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

4. The unfair labor practices in which respondent has engaged and is engaging are unfair labor practices affecting commerce, within the meaning of Section 2, subdivisions (6) and (7) of the Act.

ORDER.

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that respondent, Washington, Virginia and Maryland Coach Company:

1. Cease and desist from discouraging membership in Local No. 1079 or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

2. Cease and desist from in any other manner inter- (1026) fering with, restraining or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

3. Take the following affirmative action which the Board finds will effectuate the policies of the National Labor Relations Act:

(a) Offer to William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, employment in the respective positions formerly held by them with all rights and privileges previously enjoyed; and

(b) Make whole said William H. West, Herbert M. Hall, Charles O. Magaha, W. A. Crissman, Joseph R. Harmon, Joseph A. Garrison, Everett Moore, John Henry Dove, Robert I. Smith, Clyde J. McCaulley, James L. Atwell, Roy Miller, Theodore W. Frederick, George Beall, Lawrence J. Chase, Jr., George Louis Birch, Philmore W. Frederick and Joseph McDonough, for any

losses of pay they have suffered by reason of their discharge, by payment to each of them, respectively, of a sum equal to that which each would normally have earned as wages, at the rate set out in the Appendix I (attached hereto and made a part hereof), during the period from the date of his discharge to the date of offer of employment as ordered hereunder, less amounts earned by each during such period.

Signed at Washington, D. C., this 21st day of May, 1936.

J. WARREN MADDEN, Chairman.
JOHN W. CARMODY, Member.
EDWIN S. SMITH, Member.

(Seal) National Labor Relations Board.

(1027) APPENDIX I.

Name	Date of Discharge	Average Weekly Salary, With One Day Off Every 13 Days
William H. West	March 4, 1936	$28.00
Herbert M. Hall	March 4, 1936	28.00
Charles O. Magaha	March 4, 1936	28.00
W. A. Crissman	March 4, 1936	28.00
Joseph R. Harmon	March 6, 1936	35.00
Joseph A. Garrison	March 6, 1936	15.00
Everett Moore	March 6, 1936	15.00
John Henry Dove	March 6, 1936	15.00
Robert I. Smith	March 6, 1936	18.00
Clyde J. McCaulley	March 5, 1936	25.00
James L. Atwell	March 6, 1936	20.00
Roy Miller	March 5, 1936	30.00
Theodore W. Frederick	March 5, 1936	35.00
George Beall	March 5, 1936	25.00
Lawrence J. Chase, Jr.	March 5, 1936	12.00
George Louis Birch	March 5, 1936	27.50
Philmore W. Frederick	March 5, 1936	18.00
Joseph McDonough	March 5, 1936	25.00

AFFIDAVIT AS TO SERVICE.

In the Matter of

Washington, Va. & Md. Coach Company, a Corporation,
and
Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, et al.

Case No. C-63.

Docketed, Date 5/21. J. E. L.

DISTRICT OF COLUMBIA, ss:

I, HARRY BRICKMAN, being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 21 day of May, 1936, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision to the following named persons, addressed to them at the following addresses:

Charlton Ogburn, Esq.
Union Trust Bldg.
Washington, D. C.

Robert E. Lynch, and Wm. J. Hughes, Jr.
Investment Bldg.
Washington, D. C.

(s) HARRY BRICKMAN.

Subscribed and sworn to before me this 21st day of May, 1936.

JOHN E. LAWYER,
(Seal) Notary Public, District of Columbia.

My commission expires September 8, 1939.

(1029) RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

C. Ogburn
(Signature or name of addressee)

V. L. (illegible)
(Signature of addressee's agent)

Date of delivery 5/22, 1936.

Form 3811 U. S. Government Printing Office c 5—6116

(1030) Penalty for Private Use to Avoid Payment of Postage, $300

Post Office Department
Official Business

Registered Article
No. 830514

Insured Parcel

No.....

Washington, D. C.
May 22
3:30 P M
1936

Return to National Labor Relations Board
(Name of Sender)
Street and Number,
or Post Office Box,.....
Washington,
D. C.

(1031) RETURN RECEIPT.

Received from the Postmaster the Registered or Insured Article, the original number of which appears on the face of this Card.

Wm. J. Hughes, Jr.,
(Signature or name of addressee)

E. McKenzie
(Signature of addressee's agent)

Date of delivery May 22 1936

Form 3811 U. S. Government Printing Office o 5—6116

(1032) Penalty for Private Use to Avoid Payment of Postage, $300

Post Office Department
Official Business

Registered Article
No. 830514

Insured Parcel

No.....

Washington, D. C.
May 22
3:30 P M
1936

Return to National Labor Relations Board
(Name of Sender)
Street and Number,
or Post Office Box,.....
Washington,
D. C.

MOTION FOR RECONSIDERATION AND RE-HEARING.

(1033) UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

In the Matter of Washington, Virginia and Maryland Coach Company, a Corporation, *and* Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local Division No. 1079, et al.	Case No. C-63.

Comes now the Washington, Virginia and Maryland Coach Company, a corporation, by its attorneys and moves the National Labor Relations Board for a rehearing and reconsideration of its order herein and particularly that part of the same incorporated in Paragraph B which makes provision for the payment of a sum equal to that which the named employees would normally have earned as wages at the rate set out in Appendix 1, on the grounds, among others:

1. The Labor Relations Act being grounded upon a legislative intention to prevent the obstructing of the free flow of interstate commerce, the affirmative action of the Board as contained in Paragraph 3-B of its order directing the respondent to pay back wages from March 4, 1936, to the named employees would result in the respondent being compelled to make cash payments in excess of Four Thousand One Hundred and Seventy Dollars, ($4,170.00), to the said employees, which will result in a serious impairment of the financial condition of the Company, and will prevent the Company from obtaining necessary equipment and will jeopardize the capacity of the Company to continue to render services in interstate commerce, all contrary to the declared intention of the Labor Relations Act, and all of which respondent is prepared to prove.

2. That the said order if carried into effect herein, as stated in Paragraph 1 hereto, will result in the deprivation of respondent's property without Due Process of Law and without the equal protection of the law (1034) in violation of the Fifth Amendment of the Constitution of the United States.

3. The order of the Board being to pay back wages from March 4-6, 1936, to the named employees "less amounts earned by each during such period", respondent is unable to comply with the said order in that it has no knowledge of the "amounts earned by each during such period", and no means of obtaining said information and no power to compel the said employees to show under oath the amounts earned by each, nor the right to cross-examine the said employees under oath in the event of any such showing. That the order and the Act thus construed and applied constitutes a deprivation of respondent's property without Due Process of Law and without the equal protection of the laws in violation of the Fifth Amendment to the Constitution of the United States.

4. The said order with respect to re-employing the said discharged employees will result in respondent being compelled to discharge an equal number of employees now on the pay-roll and working for respondent. In addition numerous employees have advised respondent that if any of the present staff are discharged to make places for the employees named in the order herein they will resign their positions immediately and cease working for respondent, some of the said persons being valuable employees doing specialized work and difficult to replace, and thus the said respondent's business will be disrupted and its service in interstate commerce impeded and obstructed. The said result would likewise be in violation of the Fifth Amendment of the Constitution as aforesaid.

5. The enumeration of the specific grounds upon which respondent desires a reconsideration and rehearing shall in no way be construed a waiver of respondent's right to object to the order of the Board in its entirety, nor as the waiver of any rights of respondent

under the said Labor Relations Act or the Constitution of the United States.

WASHINGTON, VIRGINIA AND
MARYLAND COACH COMPANY,
By: ROBERT E. LYNCH,
WILLIAM J. HUGHES, JR.,
Investment Building,
Washington, D. C.,
Attorneys for Respondent.

(1035) **ORDER DENYING MOTION.**

UNITED STATES OF AMERICA.

BEFORE THE NATIONAL LABOR RELATIONS BOARD.

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 22nd day of May, 1936.

Present: J. Warren Madden, Chairman; Edwin S. Smith.

In the Matter of

Washington, Virginia and Maryland Coach Company, a Corporation, *and* Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, Local Division No. 1079, et al.	Case No. C-63.

Docketed, Date 5-23-36. J. E. L.
M.

A hearing having been held in the above-entitled case on March 23, 24, 25 and 26, 1936, and on May 2, 1936, and respondent having been given full opportunity to

cross examine witnesses and produce evidence at said hearings, and the Board having thereafter issued and duly served its decision in the above-entitled case on May 25, 1936, and the respondent having on May 22, 1936, made a motion for reconsideration and rehearing of the above case, and the Board having given due consideration to all the facts and circumstances in said case,

IT IS HEREBY ORDERED that the aforesaid Motion for Reconsideration and Rehearing be, and hereby is denied.

By direction of the Board:

BENEDICT WOLF.
BENEDICT WOLF, Secretary.

(1036) **CERTIFICATE OF NATIONAL LABOR RELATIONS BOARD.**

National Labor Relations Board, Petitioner,
vs.
Washington, Virginia and Maryland Coach Company, Respondent.
} No.....

The National Labor Relations Board, by its secretary, duly authorized by Section 1 of Article VI of the Rules and Regulations of the National Labor Relations Board, effective the 28th day of April, 1936, does hereby certify that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding before said Board entitled "In the Matter of Washington, Virginia and Maryland Coach Company and Local Division No. 1079, Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, et al.", the same being Case No. C-63 before said Board, said transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge made by Local Division No. 1079, Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, et al., verified March 5, 1936.

2. Copy of supplemental charge made by Local Division No. 1079, Amalgmated Association of Street, Electric Railway, and Motor Coach Employees of America, et al., verified March 10, 1936.

3. Copy of complaint and notice of hearing issued by National Labor Relations Board, issued March 11, 1936.

(1037) 4. Copy of order of the National Labor Relations Board designating John M. Carmody trial examiner, dated March 16, 1936.

5. Copy of order transferring proceedings to National Labor Relations Board, dated March 17, 1936.

6. Copy of objection to jurisdiction of respondent, filed March 23, 1936.

7. Copy of answer of respondent, filed March 23, 1936.

8. Copy of notice of hearing to be conducted in Room 406, Denrike Building, instead of in the United States Tariff Commission Building.

9. Stenographic report of hearing before John M. Carmody, trial examiner for National Labor Relations Board, on March 23, 24, 25, and 26, 1936, including all exhibits or copies thereof introduced in evidence.

10. Copy of notice of hearing, dated April 25, 1936.

11. Copy of notice of hearing changing the date from May 1 to May 2, 1936.

12. Copy of order of National Labor Relations Board designating J. Warren Madden trial examiner in place and stead of John M. Carmody, dated April 28, 1936.

13. Stenographic report of hearing before J. Warren Madden, trial examiner for National Labor Relations Board, on May 2, 1936, including all exhibits or copies thereof introduced in evidence.

14. Copy of decision, findings of fact, and conclusions of law and order of National Labor Relations Board, dated May 21, 1936.

15. Copy of affidavit of service of decision of the National Labor Relations Board, issued May 21, 1936, with return receipts.

16. Copy of "Motion for Reconsideration and Rehearing", filed by respondent May 22, 1936.

17. Copy of order of National Labor Relations Board denying motion for reconsideration and rehearing, dated May 22, 1936.

IN TESTIMONY WHEREOF, the secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and (1038) affixed the seal of the National Labor Relations Board in the City of Washington, D. C., this 5th day of June, 1936.

BENEDICT WOLF.
BENEDICT WOLF, Secretary,
National Labor Relations Board.

(Seal)

(1039) **STIPULATION TO OMIT EXHIBITS FROM PRINTED RECORD.**

Filed June 11, 1936.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

June Term, 1936.

National Labor Relations Board, Petitioner,
vs.
Washington, Virginia and Maryland Coach Company, Respondents.
} No. 4075.

STIPULATION.

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the exhibits in the above-entitled proceeding having heretofore been filed with the Clerk of the Court herein need not be printed as a part of the printed record on appeal herein but either party hereto may refer to such exhibits either in its brief or in oral argument.

ROBERT B. WATTS,
Associate General Counsel,
National Labor Relations Board.

WM. J. HUGHES, JR.,
R. E. LYNCH,
Attorneys for Respondents.

Dated: June 10, 1936.

F. J. Mitchell Printing Co., Richmond, Va.
7-23-36—45
J-11576

WILLIAM S. LEISERSON, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION.

Q. (By Mr. WATTS) Doctor, will you please state your residence? A. Washington, D. C.

Q. And, your occupation? A. Chairman of the National Mediation Board.

Q. And, you are here today through your courtesy in answering the subpoena of this Board, are you not? A. Yes. It says, "Fail not at your peril".

552 Q. I am glad that our colleagues hold us in such esteem. How long have you been acting as Chairman of that Board? A. Since the Board was set up by amendments passed by Congress in 1934, that is, on July 21st, 1934.

Q. By whom were you designated for your position? A. By the President.

Q. Now, will you state what your duties are, in general in connection with this Board? A. This National Mediation Board is created by an Act known as the Railway Labor Act, originally adopted by the Congress in 1926, amended in 1934. The amendment abolished the U. S. Board of Mediation, made up of five members, and created a new board, known as the National Mediation Board, of three members, to be appointed by the President with the advice and consent of the Senate. Their duties are to mediate all labor disputes on railroads that involve the making of agreements between the carriers and the organizations of the employees and all changes in such agreements. In addition to that, when disputes arise among employees—

Mr. BOWEN: Doctor, will you hesitate for just a minute? For the purpose of finding out what the purpose of this testimony is, I am objecting to it as incompetent, irrelevant, and immaterial.

Mr. WATTS: The witness is offered as a direct answer to the constitutional issues raised by coun-
553 sel in his appearance. The witness will testify as an expert on constitutional questions and will demonstrate, I am confident enough to say, that it is a reasonably designed instrument to lessen industrial strife.

Mr. BOWEN: You don't mean that he is testifying on the issue of whether the Act is constitutional?

Mr. WATTS: I am saying that he is testifying because it is made relevant by the objection as to the constitutionality of the Act.

Chairman MADDEN: Don't you think that the question of constitutionality, either under the due process clause which you raise or under the Interstate Commerce clause which you raise, is a question of fact?

Mr. BOWEN: I don't know. I just entered my objection for the purpose of finding out.

Chairman MADDEN: Objection overruled.

Mr. BOWEN: Exception.

Chairman MADDEN: Exception noted.

Q. (By Mr. WATTS) Continue, Doctor. A. The first duty is to mediate such disputes as I have mentioned. The second is to investigate and determine and settle disputes as to representation under the Act of employees who have a dispute among themselves as to what person or organization shall represent them for the purposes of collective bargaining with the employer.

554 All such disputes are considered disputes among employees that the employer must not concern himself with, but when either party among the employees invokes the services of our board, it becomes our duty to conduct an investigation and to determine the result, either by taking a secret ballot among the employees or by some other appropriate method, the Act reads, to determine the choice of a majority of the employees involved and then certify the same, issue a certification to the carrier and to the employees as to who is the duly designated and authorized representative of the employee in this respect and the carrier is then instructed by the Act to treat with such duly certified representative.

Now, those are the two main duties. Incidental to that, the Board has certain other duties. When we mediate disputes and a mediation agreement is entered

into, if a dispute ever arises as a result of that mediation agreement, then our board is authorized to act as a court, have a hearing and interpret and to make a decision on the interpretation or application of that mediation agreement.

Now, in addition to that the Act provides that in disputes that arise due to the interpretation or application of collective bargaining agreements between the carriers and organizations of employees, that that shall not be under our jurisdiction. A board is set up out in Chicago, known as the National Railroad Adjustment Board, for interpreting and applying the agreement. We
555 only can mediate when there are changes in these agreements to be made or where new agreements are to be made. Now, that board, when it deadlocks, that is made up of an equal number of representatives of employers and employees, and when it deadlocks, it is our duty to appoint a referee, an impartial person, so that a decision can be made by the board. Similarly, we have a duty in connection with voluntary arbitration. When we mediate disputes and we fail to get an agreement—you must understand that the Act lays it down as a fundamental principle, in order to prevent interruption of interstate commerce, that it is the duty of every carrier and their employees to exert every effort, that is the exact language, "to exert every effort" to make and maintain agreements, such agreements to be made through representatives chosen respectively by the carriers and by the employees, and every such agreement that is made must be filed with our board, and we have close to twenty-five hundred or more, around twenty-five hundred or more such agreements on the first class carriers alone, and this board in Chicago interprets them.

Now, when we cannot get them to enter into such an agreement, the law directs us to do this: We must get in touch with the parties to the dispute as promptly as possible and use our best efforts to bring them to an agreement. If we feel that we must induce them to enter into a voluntary arbitration agreement and they
556 enter into such a voluntary arbitration agreement, then each board selects one or two representatives and if they fail to agree we have to appoint an impartial person as referee.

Broadly speaking, our duties are mediation as to all disputes, excepting the interpretation of agreements,

and acting as a fact determining body in determining as to who shall make agreements for the employee.

Q. (By Mr. WATTS) Doctor, prior to becoming chairman of the National Mediation Board, what offices, if any, did you hold? A. I was Chairman of the Petroleum Labor Policy Board, under the Petroleum Code.

Q. And, before that? A. I was Secretary of the National Labor Board, as originally constituted by the President and Senator Wagner was Chairman of it.

Q. Have you at any time ever held a professorship at any college or university? A. I am on leave now from Antioch College. I have been Professor of Economics there since 1925.

Q. State your experience prior to that? A. Prior to that I was Chairman of the Board of Arbitration in the Chicago men's clothing industry, set up by a collective bargaining agreement between all of the large clothing houses, Hart, Shaffner, and Marx, Society Brand,
and all of those, and the Amalgamated Cloth-
557 ing Workers' Union. They agreed that there
would be no strikes or lockouts and that all disputes would be settled in accordance with the terms of an agreement that they made and they set up a system of courts, two trade boards to hear disputes in original jurisdiction and a board of arbitration to hear appeals from those two boards, and I was chairman of that.

Q. In 1930 and 1931, did you hold office by designation of the Governor of Ohio? A. I don't know that it was an office, but the Governor, under authority of the Legislature, appointed an Ohio Commission on Unemployment Insurance and I was designated as chairman of it.

Q. Between 1921, 1922, and 1923, what were you doing? A. I was acting as mediator or arbitrator, mostly arbitrator, in the men's clothing industry, under such agreements as I have described, in Chicago, Rochester, New York, New York City, and occasionally called to other places, and also in other industries, because it became known that I was acting in that capacity and I would often be called in on printing, shoes, leather, and so on.

Q. During the War, what were you doing? A. I was Chief of the Division of Labor Administration in the Department of Labor, the main function of which was

really helping industries that were engaged in war work to set up personnel and labor relations departments and policies to avoid strikes and disputes.

558 Q. I believe you received your Doctorate in 1911 from Columbia University? A. That is correct.

Q. And, at that time, did you publish a study which you had made in connection with your Doctorate? A. Yes. It was "Unemployment in the State of New York".

Q. Now, Doctor, have you made a study extending over the last forty-five of fifty years, of the history of the laws and the problems of industrial relations, with special relation to the transportation industry? A. In connection with our Annual Report, which our Board is having prepared now, we have had a review of railway labor legislation for the beginning and, of course, I have been teaching labor relations and have been familiar with the general economic background of the thing for a good many years.

Q. And, without going into detail as to each particular enactment, will you state for the record the period over which legislation has been passed by the Congress of the United States pertaining to industrial relations in the transportation industry? A. The amended Railway Labor Act adopted in June, 1934, June 21st, represented the culmination of forty-five years of dealing with labor relations questions on the railroads. When this Act was adopted in 1888, the first Act, it pro-

559 vided for just two things. There had been some very bitter strikes in the railroad industry. The whole Gould system, M. P., Texas Pacific, and the M. K. T. had been tied up, ten thousand miles in the southwest, and there were a lot of bitter transportation conflicts and there was a demand that Congress should do something about it. So, an Act was passed in 1888, and it provided two things, that where there is a dispute, the parties should be authorized to enter into an agreement to arbitrate it voluntarily; also, that the President might appoint an investigating body to investigate such dispute and make a report to the public on the merits of the dispute. That is all that it provided.

That Act was in force for ten years and in all that time the arbitration features were never used. Only one investigation was made of a very bitter and large scale strike, the American Railway Union strike, that is the

Pullman strike of 1894, and that investigation was made when the strike was practically over.

In 1898, the next Act was passed, which was known as the Erdman Act, and it eliminated the investigation features and introduced two new features. First, it had a provision that no employer shall discriminate against people, employees, for membership in any labor organization and shall not discharge them for such membership, and, second, it provided that if employees and the employers cannot settle their disputes and there is a threat of strike which might interrupt com-
560 merce, the Chairman of the Interstate Commerce Commission and the Commissioner of Labor—that was before the days of the Department of Labor—might together act as mediators to settle the dispute.

That Act was in force until 1913. In the first eight of nine years not a single case came up under it. During the second half, those two mediators or those two chairmen, did a good deal of mediation and it became apparent that a good deal could be done in the way of settling disputes by getting representatives of the parties together.

Meanwhile, I think it was around 1902, the first provision about not discharging a man for union membership was declared unconstitutional by the Supreme Court, in *Adair* vs. *The United States*.

There were some bitter strikes in the latter part of the period of this Erdman Act, particularly on the Harriman System which included the Illinois Central System, so the Newlands Act, enacted in 1913, I think, set up a full-time agency to mediate disputes and it provided more effective machinery to perfect the sort of thing these two men had done under the last part of the Erdman Act.

The next piece of legislation was the so-called Adamson Act, in 1916. This mediation body, created under this Act, known as the United States Board of
561 Railroad Mediation and Conciliation, was unable to settle a dispute in which the men asked for an eight-hour day. This Newlands Act also provided that the parties shall be induced to arbitrate but they couldn't succeed in getting that, so Congress stepped in and tried to settle this dispute by legislation, and it enacted this eight-hour day, President Wilson saying that the country had reached a point where he felt that was the proper

length of the day's work. Peculiarly enough, the dispute never was settled by that Act, because as soon as it went into effect it was taken into the courts and the lower court declared it unconstitutional, whereupon the men threatened to strike.

By that time, the War Industries Board had been set up and they came in and mediated the dispute and got the railroads to accept under a mediation agreement what the law provided and then the men didn't strike, and sometime later the Supreme Court overruled the lower court and held it constitutional, but it was settled then, in that way.

Now, when the Government took over the railroads, it set up a Labor Department and it inaugurated several new policies. First, it restored the thing that had been declared unconstitutional. It granted the right of the men to organize and to bargain collectively and to join an organization and prohibited the management of the railroads from interfering with it. Secondly, it adopted the policy of getting the carriers and the various divisional lines and the representatives of the em-

ployees,—and, you must understand that under
562 the Railway Labor Act, although it used the term "representatives" and says that any person or organization may act as representative, we haven't had a single case where an individual was certified as a representative. It is always an organization. They entered into a policy of setting up national agreements covering each craft, locomotive engineers, firemen, shop crafts, and so on. That is the second policy. Of course, they took that from the agreements that were in effect on many roads before and they extended them nationally. Third, they set up three boards of Railroad Adjustment, as they called them, an Eastern board, a Southwestern board, a Western board, and so on, for the purpose of interpreting and applying the agreements.

Now, that was put in during the time that the Government was itself the employer.

When the roads went back under private ownership the Cummings Act, the Transportation Act of 1920, was adopted. Title 3 of that dealt with labor and it reverted to practically was the original Act in 1888. It provided that a board of nine men shall be appointed, three to represent labor, three the carriers, and three the public,

which shall have the right to investigate, hear, and decide all disputes. There was no obligation on anybody to obey those decisions and the result was that it was like the Act of 1888, in the sense that a Government body investigated published its opinions and
563 then the idea was that public opinion would enforce it.

Well, during that period we had the nation-wide shopmen's strike of 1922, you will remember. Both the carriers and the employees refused to obey many of the decisions and by 1925 the parties were thoroughly disgusted with the Act and then a joint committee of the carriers and representatives of the railway labor organizations met together and formulated the Railway Labor Act of 1926, and this committee of the carriers and the committee of the railway labor organizations went together to the Congress and jointly asked Congress—said "Let's get rid of the Transportation Act of 1920 so far as it applies to labor and let's substitute this, because we think this is the way to maintain peace in our industry."

Well, when both labor and capital go to Congress in agreement, then that legislation is usually adopted just as they want it. Anyway, this is what happened in this case and it is true that since 1926 there has not been a major strike in the industry. I only know that in 1928 there were two small strikes in the industry, one unauthorized, by an organization in New York, in the express part of the industry that was over in a few days, and a small one in some Western subsidiary line that wasn't important enough to interrupt commerce, so that the board took no action about it, and right now there is
a little strike up near Cleveland on a road about
564 two miles long, and aside from that there hasn't been a major dispute or a major strike in the industry and there have been some of the most bitter questions come up. Since 1929 we have found in our study for the purposes of our report—of course, the figures went down generally during the depression, but beginning in 1933, when the upward movement began, and it is universally true, of course, that strikes follow the business cycle, we have had strikes in every industry or in a large number of industries. The railroad industry, although they had to reduce wages, when they also had to raise wages settled them by collective bargaining and

negotiation, in accordance with the provisions of the Act, whereas in all of the other—I shouldn't say "all of the other"—whereas the statistics of strikes, and if you want some I have got them here as recorded by the Department of Labor, Bureau of Labor Statistics, since 1916, I have the figures.

Q. (By Mr. WATTS) I would like, for the complainant, to put in evidence, Doctor, if you have it here, this table 12. A. Yes; here it is.

Mr. WATTS: We offer in evidence table 12, which appears at page 76, Volume 39, No. 1, Monthly Labor Review, issued by the United States Department of Labor, Bureau of Labor Statistics, under date of July, 1934.

Mr. BOWEN: I take it that all of this evidence is being received under my objection?

565 Chairman MADDEN: Yes.

Mr. WATTS: We offer in evidence Table 7, appearing at page 1266 of Volume 40, No. 5, of the Monthly Review of the Department of Labor, Bureau of Labor Statistics, for the month of May, 1935.

Chairman MADDEN: They are received in evidence.

The WITNESS: You might mention also Table 14 in this one [indicating].

Mr. WATTS: We offer in evidence Table 14, appearing at page 77, Volume 39, No. 1, Monthy Review of the United States Department of Labor, Bureau of Labor Statistics.

Chairman MADDEN: Received in evidence.

The WITNESS: Now, this table 12, that you mentioned before, shows the total number of strikes by years, from 1919 to 1933, inclusive, and in 1919, for instance, there were 3,630 strikes. In 1920, there were 3,411. In 1921, there were 2,385. In 1922, there were 1,112. Now,

you will notice that 1919 was the peak or top of the business cycle. In the latter part of 1920 the depression began. 1921 and 1922 were the years of depression. In the latter part of 1922, it started up again, and, so, in 1923, when we had a rise in business activity, the number of strikes went up from 1,112 to 1,553. 1924 was a year of business recession, slight recession, and strikes went down to 1,249. In 1925, business started up again
566 and strikes went up to 1,300. Then, we had years of prosperity from 1926 to 1929, but the economists noted a peculiar difference between that prosperous period and all others, that prices on the whole remained stationary during that period and that is reflected in the strike movement. When costs of living go up, then strikes increase, and in all this period strikes went down, 1,035 in 1926, 734 in 1927, 629 in 1928. 1929 was reaching the peak and there was a slight increase to 903. In 1930 strikes went down to 653. In 1931 and 1932, they stayed around 800 and in 1933 they jumped to 1,562, but prices started to go up in 1934, and they jumped to 1,740.

Now, Table 14 shows this same type of figures by industries, building trades, furniture, iron, steel, and so on. They have all had strikes. The lowest industry is transportation, steam and electric. Unfortunately, they haven't separated them, but we know from our records that since 1926 we haven't had any strikes, except these two minor ones in 1928. So, the first year, prior to 1926, in 1919, there were 191 strikes in transportation, steam and electric. In 1920, 241. In 1921, 37. In 1922, 67. There were 7 in 1925 and 8 in 1926. In 1927, one. In 1928, three. In 1929, five. In 1930, three. Most of those must be electric lines because they weren't on the railroads. In 1931, no strikes at all. In 1932 there was one, which must have been an electric line. In 1933, there were no strikes at all in transportation and in 1934
567 there were none in transportation.

Q. (By Mr. WATTS) Those electric lines would not have been subject to the national jurisdiction? A. They are not subject to our jurisdiction. They are not part of the National railroad system. Now, the reason I say that the purpose of the parties, when they came with this law jointly arrived at, that purpose was accomplished, is because they stated what their purpose

was and we have the purpose in the provisions of the law. The law says, first, there are really three fundamental principles for the maintaining of peace in the industry that are embodied in this law, one—

Q. Pardon me, Doctor. This is the 1926 law? A. Yes; the same as the 1934 law, with minor amendments, which I will point out.

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions", "and those agreements must be filed with us. and that provision for filing with us is in the amendment of 1934. It wasn't in the original amendment. That shows you two things. First, that there are written agreements, not just talk. It is a contract. Second, it is not individual contracts with individual members, it is a collective bargaining contract that is filed, because it is a contract which the lan-
568 guage of the Act says, "concerning rates of pay, rules, and working conditions". So all questions of whether a man is justly discharged, what dischargeable offense it was, whether an engineer shall get six dollars a day or so much a day, what his seniority rates shall be, all those points, the order in which they shall be laid off, what shall happen when they work overtime, and so on, all of it must be written out, in a contract, and these contracts are printed and they are very long things, and the purpose and intent of the law and the system which the law imposes upon the parties can be seen in the preamble to these agreements.

Now, here, for instance, is an agreement between the Delaware, Lackawanna and Western Railroad Company and System Federation, No. 78, Railways Employees' Department of the American Federation of Labor, Mechanical Section. That takes in eight shop crafts. This is the agreement that is filed with us. There are six of those shop crafts. Now, to give you an idea of how the law operates: Sometime ago these six employees' organizations petitioned our board and said there was a dispute as to whether they or what they call the company organization or company union are the proper representatives of the employees. We sent a man to investigate, a mediator. He found there was a dispute and ordered an election. He held the election and these six organiza-

tions, all operating through the Railways Em-
569 ployees' Department of the American Federation of Labor, they are federated together as System No. 78, won the election and we certified this organization as the representative under the Act. The System Federation, there is one man from each of these six unions, you see, then sent a letter to the carrier saying, "We would like to meet with you and make our agreement with respect to hours, rates of pay, and working conditions", and the carrier met them and they sat around for maybe three months and worked out this detailed agreement.

Now, I want to read to you, first, the preamble there, which indicates the purpose of the Act and the purpose of the agreement.

"Preamble. The welfare of the Delaware, Lackawanna and Western Railroad Company and its employees is dependent, largely, upon the service which the Railroad renders the public. Improvements in this service and economy in operating and Maintenance expenses are promoted by willing cooperation between the Railroad Management and the voluntary organization of its employees. When the groups responsible for better service and greater efficiency share fairly in these benefits which follow their joint efforts, improvements in the conduct and efficiency of the railroad are generally encouraged. The parties to this agreement recognize the foregoing principles and agree to be governed by them in their relations".

Now, that preamble first appeared in 1926, and the agreement was with the Baltimore and Ohio Rail-
570 road Company and System Federation No. 30. After the shopmen's strike was settled and after the 1926 Act was adopted, this has become known as, this B. & O. agreement has become known as the so-called "cooperative plan".

Now, notice what it says in there, that the purpose of the Act is, the voluntary association of the employees joined together with the representatives voluntarily designated by the carrier, not interfered with by the employees, for the purpose of cooperating on the terms and conditions of their employment to improve service.

Now, the second principle in the Act, under the duties, and I think I can do it better by reading the paragraph of the Act itself. Section 1 deals with mere defini-

tions. Section 2 states the general purposes of the Act, to avoid any interruption of commerce or the operation of any carrier engaged therein. "(2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization".

For instance, 'to forbid any limitation upon freedom of association". If the employees of a carrier want to join one of the so-called outside organizations and have that outside person or organization to represent them, it is none of the carriers' business what kind of an organization they join, under this Act, and the carrier
571 may not put any limitation upon them by contract or in any other way. It further says, "(3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act"; and then to provide for the settlement of disputes, it says, "(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application or agreements covering rates of pay, rules, or working conditions".

Then, it says "General Duties. First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof".

What is that for? It is the obligation put upon both to try to settle disputes, and, second, it tells them how to settle them. It goes on:

"Second. All disputes between a carrier or carriers and its or their employees shall be considered, and,
572 if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Q. (By Mr. WATTS) Pardon me just a moment, Doctor. Freedom of association, to which you have referred in describing this Act, would include, wouldn't it, freedom from discharge for joining an organization? A. Oh, yes. I was going to read you some of the provisions now, because there was interference by the management in some cases with the representatives designated by the employees. That came about in two ways. One case went to the Supreme Court, the case of the Brotherhood of Railway Clerks, Railway and Steamship Clerks against the Texas and New Orleans Railway, which is a part of the Southern Pacific, I think, and that company had one of the Brotherhood of Railway Clerks named to represent the employees, since the majority belonged to them. That company proceeded to organize an organization of employees of its own to confer with the railroad, and it was taken to the courts and the basis of the appeal to the courts was that it interfered with the selection of representatives by the employees, and the court upheld the law in that case, and here is the interesting thing about it, because the carrier raised the question in Adair *vs.* United States, that it had a
573 right to discriminate amongst their employees, to discharge whom they pleased and so on, but Judges Hughes, who wrote the opinion, said, that question was not involved there, that Congress in order to prevent the interruption of commerce has said that each party shall designate its own representative and in this case the organization was the representative, just as a corporation may represent an employer or be an employer, and he said, since there is no constitutional right to interfere with the organization or selection of representatives, the other point was not well taken, and that is how this part of the statute, the selection of representatives, was taken care of.

Now, during the period of 1933, when the N. R. A. came in, with Section 7-A, and there were strikes and movements of employees in all industries, many of the roads that had no organizations on them before that began to organize, too, and a good many company organizations were set up on the railroads. Some of them came about after the strike of 1922, the shopmen's strike. Congress had put into the Transportation Act, it created the position of Federal Co-ordinator of Transportation, and

had provided that the employers must not pay the expenses of company organizations, and, as under our Act, must not interfere with the organizations and so on. So, Mr. Eastman conducted an investigation and found many of these company organizations spread about the country and he reported that to Congress when he
574 appeared before it. In fact, this Act was largely an amendment to the Act, or was largely drafted in his office, and he appeared before Congress and explained why he suggested these amendments. Part of the Federal Co-ordinator's business was to recommend to Congress, so he put in these things: "(3) Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other". It wouldn't be possible, for example, under our Act, for a company to have the ballots on such an election. That would be illegal for it to have anything to do with it. It goes on: "and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier". For instance, no carrier would be permitted to suggest a set of by-laws to the employees that would make the set of by-laws state that only employees shall be representatives. That would be a violation of this provision, for such limitation would be held to be influencing them to give up a right that Congress gave them, because you are trying to in-
575 fluence them to prevent their designation of representatives from the outside. It further says: "Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act".

Now, you cannot have collective bargaining, which is the purpose of this Act, among the workmen from a whole craft, if one set of employees say they don't want it

and another says they want an agreement There must be an agreement on hours, rates of pay, working conditions, and in practice they operate by that and the carriers wouldn't want several different agreements for the same craft, and so, when there is any dispute, our board is given the authority to settle that dispute, so that there will be no strike. We had, for instance, ninety-six elections or cases where either elections or other methods were involved, during the year, and we certify to the representatives when it is clear that a majority prefers one organization to another. Then, that organization makes the contract.

Now, you see, there are three principles, first, the agreement; second, the representatives; and, the third is the collective bargaining between them, interference by either party being prohibited in any way and
576 neither one being influenced by the other.

Now, if you are making a contract like this, it has to be filed with us, like the one I read from. That requires skill, time and money while you are working it out. The intent of the law is that there shall be equality in bargaining power when they sit around the table. Now, about the representatives. The employees of course, bring in their general officers, who are high salaried men, attorneys, bring them to talk with the management and contract for the employees. Now, if the employer said, "You are fired", obviously, you couldn't have any collective bargaining and you are going to have a strike, and that is what happened prior to the enactment of this law. When the freedom of the individual is protected and neither party can say that it refuses to do it, each one of them can say what they think ought to be done, but they cannot impose it on the other. There has to be an agreement. For instance, if either party writes to us that there is a dispute, we say, "Have you conferred"? The law says that if one party writes to the other asking for a conference, that conference must be granted within ten days, and if such a conference was not held, we would then call up the parties and say, "The law obligates you to hold a conference, go ahead", and we settle very many of our cases that are filed with us by telling them to go ahead and confer some more and perhaps they will be able to get together, or one of our

mediators will go there and bring them together
577 again, and they finally iron it out, but the purpose is to get this collective agreement, so that the will of neither the employer nor the will of the employees shall prevail. There must be a joint meeting of the minds. Then, both will be satisfied and on that basis you can maintain business but you cannot have that if either side is going to have anything so say as to the kind of fellow who will represent the other side and, therefore, this law, this third section, fourth section has been read, and this fifth section, which reads: "Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization".

Under these sections of this law more is required than that. It says, "Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act", which means that first there must be written notice, thirty days' written notice, and then there must be a conference between duly designated representatives with which the other party has nothing to do, and then these sections which I have just read must be put on the bulletin board in the form which our board prescribes and the carrier prints, signed by the President and the important thing about that is this:

"Eighth. Every carrier shall notify its employees
578 by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section". Those are the sections I just read, protecting the integrity of the representatives, so that the employees can't tell the management, "We don't like this represenative, we don't like the man whom you have appointed", and the management can't tell the employees or have anything to do with it. Then, it say, "The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee", and that is the amendment of 1934, "and shall be held bind-

ing upon the parties, regardless of any other express or implied agreements between them".

Now, no carrier has contested this. It is recognized in the industry, because both sides really agreed on the law originally that both sides must confer and not interfere, and we didn't have any question about it.

Q. (By Mr. WATTS) Doctor, based upon your studies and upon your experience, upon the records of the Department of Labor, will you please tell the Board whether or not in your opinion the recognition of the principle of collective bargaining in practice as well as in law does make for industrial peace and avoid industrial strife in the transportation industry? A. Well, my study
579 of this legislation of forty-five years makes it obvious to me that all of the experimentation of these different Acts that we have had—there was a lot of fumbling; they tried arbitration; they tried investigation; and, they tried decisions. Finally, everybody could see, everybody in the industry could see, and it is the consensus of opinion, that the only way these things can be settled properly is not by one party or the other saying, the employer saying, "We cannot afford to pay any more", while the employee says, "We cannot afford to live on any less", that doesn't get you anywhere, but on the basis of both sides getting down to an equality. Now, if you don't do that, do it that way, you either have strikes or else you have the Government itself passing the law. The Government will pass an eight hour law or a minimum wage law, or something like that, but in the railroad industry the experience with the Adamson law showed that that didn't settle things, and both the carriers and the employees are in agreement about that, and we want to protect the carriers and the employees and have honest collective bargaining, so that when they sit around a table with respect to a proposition, they are trying to arrive at a contract. These contracts all may go on for years. They all have the same terminating clause, that unless either party gives thirty days' notice of the desire to change, it just continues, but they
580 cannot operate unless there is protection to prevent what under our law are unfair labor practices. Under our law, they are misdemeanors, punishable by a money fine or imprisonment, or both.

Now, there is no real cure for industrial strife. You will have some strikes. You will have lots of disagreement, and the law provides for mediation, voluntary mediation. When our Board comes in, with no authority whatever except to say, "Here, you people, you better hold off whatever action you are going to take until you can sit around a table and discuss it", there is no such thing as the employer saying "this representative violated a rule of the company", because, we would say, "This representative is like a representative in Congress. You cannot stop him from acting as a representative of the employees. He is their business agent, just as your manager is". Now, when you have that you can have peace in industry, and our forty-five years of experimental legislation, where everything has been tried, has convinced the people in the industry and, I think, the Congress, that that is the way to deal with it.

Q. (By Mr. WATTS) In your opinion, Doctor, can real effective collective bargaining be achieved unless there exists for the employees a labor organization or representative which is entirely free from the domination of the employer? A. Well, I think the thing really answers itself, if you start out with the point that
581 we have in the Railway Labor Act, that you are going to make a contract. Then, of course, you cannot have one party on both sides of that contract. If the management can in any way have any authority to say to the representative, "You are not behaving right", it would be just the same as if you talked to Mr. Bowen over there and had authority to dismiss him or discipline him in any way. You cannot handle the case here and you cannot handle a labor contract any more than you can handle the case here, unless the representatives on both sides are absolutely independent, and it isn't fair, it isn't American, as Mr. Eastman said in his report, for either party to claim for the other one—put it this way: What happens when you make one of these contracts is that instead of each individual laborer going to the employer and selling his labor individually in competition with other labor, the majority will. This is what the Act permits him to do, that is what stockholders in a corporation do. Instead of each stockholder going into business himself, the corporation will permit him to put a lot of money in and create a fictitious personality, the majority ruling and then we have an agent act

for that person. Now, the law of collective bargaining means that the employees, instead of each *on* voting will act in something like a corporate capacity, through a majority rule, and will sell their labor collectively. It is collective marketing of labor. Therefore, they have
to go out and hire a salesman, and I don't like
582 high powered salesmen in daily business, but, nevertheless, they have their function. Now, the employers don't like a high powered labor salesman any more than the employees like high powered employers' representative. It is a matter of bargaining, but if they could get the idea that the employees have as much right to hire personnel managers for themselves, business agents, attorneys, accountants, specialists, as they have, scientific experts, as the management has—after all they are American citizens—then, they have respect for themselves and for each other around a table, and that is what has happened in the American railroad industry. If you go back you will find the strikes in '77. They had to bring in the Federal soldiers and at that time the issue was that the Train Service Brotherhood was trying to get the right to bargain through their own organization, to organize these organizations as their business agent, and the carriers said, "No, sir". Well, by the eighties or the nineties, the Train Service Brotherhood had won that right and that was the beginning of their having contracts, and the men, the employees, were joining up. Between 1884 and 1886, we had another episode of terrible strikes. Who were striking then? Not the Train Service Brotherhoods, but the shop crafts, which were asking for these rights, and, always, if you follow the legislation and if you see what has happened in most of these strikes in recent years, it is how the employees
were asking for this right to set up something like
583 a corporation of their own, to negotiate for the sale of labor jointly and to hire experts, business men, to represent them and to talk good business with the employer, and because the manufacturer does that, even fixing the wages that determine the income of employees, and the employees haven't anything to say about it, that you have strikes.

Now, I lay much stress on that, because in 1919, after the Armistice, because we had a big rise in prices and then in the early part of 1920, we had an awful flood of

strikes. President Wilson called an industrial conference to see what could be done about it. In October, 1919, they met in a conference and the conference broke up and the employees said "We want to have the right to bargain collectively through representatives of our own choosing, whether they work for the employer or not". When the employer hires a personnel manager, he doesn't hire a fellow from the industry. He will hire an engineer from a university or a psychologist. I have been employed by employers to help them set up a personnel department. I am a professor and I don't know anything about the details of a business. These employers hired me because I did know something about human beings and how they acted in an employer-employee relationship. The employer hires me and I must confess that I charge him "fat" fees, but he hires me. The employees should have the same right. They cannot do it as individuals but if they have a large organiza-
584 tion and chip in, they can hire experts, and they do.

That conference of President Wilson's broke up on that issue of whether the employees could select representatives outside of the plant in which they worked, and Congress settled that issue, it settled that issue in the railroad industry some years before, and in the recent legislation they settled the issue when it said, "The employees shall have the same rights as the employers have".

I don't know whether this is of value or pertinent to you or not, but the fact of this collective bargaining and the equality of choice of representatives is a very fundamental thing, which the Supreme Court has taken cognizance of in its decisions. I would like to read, if it is permissible, a paragraph from *Holden* v. *Hardy, Sheriff*, 169 U. S. 366. The case involved the eight-hour statute. Its constitutionality was challenged. The Court upheld the constitutionality, with two Justices dissenting. Here is what it said:

"The legislature has also recognized the fact, which the experience of legislators in many states has corroborated, that the proprietors of these establishments and their operatives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The

former naturally desire to obtain as much labor as possible from their employees, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In
585 other words, the proprietors lay down the rules, and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

"It may not be improper to suggest in this connection"—this is the next paragraph—"that although the prosecution in this case was against the employer of labor, who, apparently, under the statute, is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employees, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class."

Now, this, it seems to me, makes plain the fundamental issue in labor relations with respect to which the Congress has had to act, so far as railroad transportation is concerned, and they having acted, there is no other method to pursue. Employers and employees are not on an equality. Anybody knows that. How shall they be made equal? You can do two things. You can do as the court upholds here, pass a statute and have a whole lot of government regulation, or you can protect the right of the employees to organize.

Now, everybody in this country, presumably, has had the right to organize since the case of *Commonwealth* v. *Hunt*, in which Chief Justice Shaw of Massachu-
586 setts ruled that it wasn't any more a conspiracy, if the purpose was legitimate, and to get better wages and rules and get an agreement was a legitimate purpose. Therefore, nobody has questioned the right of the employees to organize, but, notice, until this legislation came along, the employer had the actual right to destroy the organization. Well now, what kind of a right of private property would I have if anybody had the right to come in and take away that property? That wouldn't be a right. There hasn't been a right to organize as long as the employer could destroy that organization, and all this legislation has done, the legislation that I know

about the railway labor legislation, and all I think that this other legislation attempts is to make the right to organize a legal right. We ought not to trespass on that right; otherwise, what rights do you have to defend yourselves. If I have the right to walk on the street, that means that the policemen and all the government will see that nobody punches me on the jaw, but if I have to fight and carry a gun myself, I haven't any right in a real sense.

Now, this legislation is trying to set up the right to organize, which means a corresponding duty; do not trespass upon that right. When you have that right, if the employees are the equals of the employers, they respect each other; they can make business bargains, and you can avoid strikes; not always, because there
587 is no sure cure against foolhardiness, but compare what has happened in other industries with this collective bargaining method in the railroad industry. When they had to cut wages in the great depression, they said, "We think it necessary, we are sorry to say that we have to cut wages", and the employers gave thirty days notice, under the contract. The employees' representatives agreed to have a conference. They met in Chicago, they talked over all of their problems. They agreed and agreed later, when they had a conference, that those cuts would be slowly restored, and we didn't have to have the government butting in and police and legislation as to hours and wages and things of that kind. When you can enforce equal bargaining power, equal rights, then you have given the co-operation that business needs and in a business-like way.

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

No. 4075.

National Labor Relations Board, Petitioner,

versus

Washington, Virginia and Maryland Coach Company. Respondent.

On Petition for Enforcement of an Order of the National Labor Relations Board.

June 9, 1936, petition for enforcement of order of National Labor Relations Board is filed and the cause is docketed.

(Memo. of Clerk: This petition appears at page 1 of the printed record and is, therefore, omitted here.)

June 9, 1936, the appearance of Charles Fahy, General Counsel, National Labor Relations Board, and Robert B. Watts, Associate General Counsel, National Labor Relations Board, is entered for the petitioner.

Same day, the transcript of record is filed.

PETITION OF NATIONAL LABOR RELATIONS BOARD FOR HEARING OF CASE DURING JUNE TERM 1936, OF COURT.

Filed June 9, 1936.

(Style of Court and Title Omitted.)

To the Honorable Judges of the Circuit Court of Appeals for the Fourth Circuit:

Now comes the Petitioner, National Labor Relations Board, and respectfully shows:

1. That this proceeding arose out of the filing of a complaint by your Petitioner against the Washington, Virginia Coach Company, a corporation, under the Act of Congress approved July 5, 1935 (Public No. 198, 74th Congress, 49 Stat. No. 29 U. S. C. A., Chap. 7, Sec. 160(e)), known as the National Labor Relations Act.

2. That your Petitioner has herewith filed an application for enforcement of a cease and desist order heretofore issued by your Petitioner against the Respondent under and by virtue of Section 10 (f) of the said National Labor Relations Act.

3. That by Section 10 (i) of said Act it is provided that such application for enforcement of said cease and desist order filed under this Act shall be heard as expeditiously as possible and if possible within ten days after it has been docketed.

4. That Respondent has failed to comply with the aforesaid cease and desist order and your Petitioner alleges that the Respondent will not comply therewith.

5. That your Petitioner has given notice to the Respondent of the filing of this petition.

Wherefore, your Petitioner prays this Honorable

Court to set this case for hearing during the present term of this Court.

And, as in duty bound, etc.

NATIONAL LABOR RELATIONS BOARD,
By JOHN J. BABE,
Attorney for Petitioner.

STATE OF NORTH CAROLINA,
City of Asheville, ss:

I Hereby Certify that on this 9th day of June, 1936, before me, the subscriber, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, at Asheville, in the State of North Carolina, personally appeared John J. Babe, Attorney for the National Labor Relations Board, the Petitioner herein, and made oath in due form of law that the matters and facts set forth in the aforegoing Petition are true to the best of his knowledge, information and belief.

CLAUDE M. DEAN, Clerk,
U. S. Circuit Court of Appeals,
Fourth Circuit.

June 10, 1936, notice to respondent filed, and certified copy, together with certified copy of petition for enforcement, transmitted to Benedict Wolf, Secretary, National Labor Relations Board, for service.

(Memo. of Clerk: This notice appears at page 6 of the printed record and is, therefore, omitted here.)

RECEIPT OF COPY OF NOTICE AND PETITION.

(Memo. of Clerk: The following endorsement appears on the original notice: "R. E. Lynch, Attorney for Respondent, Copy of Within Notice and Petition received June 11th, 1936".)

ORDER ASSIGNING CASE FOR ARGUMENT, ETC.

Filed June 10, 1936.

(Style of Court and Title Omitted.)

Upon Consideration of the petition of the petitioner to set this case for hearing during the present term of this Court and the argument of counsel in support thereof as well as against the same.

It Is Ordered that this case be assigned for argument on Thursday, July 2, 1936.

And It Is Further Ordered that twenty copies of the printed brief for the petitioner be filed on or before June 19, 1936, and that twenty copies of the printed brief for the respondent be filed on or before June 29, 1936.

JOHN J. PARKER,
Senior Circuit Judge.

June 10th, 1936.

STIPULATION TO OMIT PRINTING OF EXHIBITS.

Filed June 11, 1936.

(Memo. of Clerk: This stipulation appears at page 559 of the printed record and is, therefore, omitted here).

June 18, 1936, the appearance of R. E. Lynch and Wm. J. Hughes, Jr., is entered for the respondent.

June 24, 1936, twenty-five copies of the printed record are filed.

ARGUMENT OF CAUSE.

July 2, 1936, (June term, 1936) cause came on to be heard, together with No. 4074, before Parker, Northcott and Soper, Circuit Judges, and is argued by counsel and submitted.

OPINION.

Filed October 6, 1936.

UNITED STATES CIRCUIT COURT OF APPEALS,

FOURTH CIRCUIT.

No. 4075.

National Labor Relations Board, Petitioner,

versus

Washington, Virginia and Maryland Coach Company. Respondent.

On Petition for Enforcement of an Order of the National Labor Relations Board.

(Argued July 2, 1936. Decided October 6, 1936.)

Before PARKER, NORTHCOTT and SOPER, Circuit Judges.

ROBERT B. WATTS, Associate General Counsel for the National Labor Relations Board, (CHARLES FAHY, General Counsel for the National Labor Relations Board, JACOB BLUM, LAURENCE A. KNAPP, PHILIP LEVY and MELVIN C. SMITH, Attorneys, National Labor Relations Board, on brief) for Petitioner, and ROBERT E. LYNCH and WILLIAM J. HUGHES, JR., for Respondent.

SOPER, Circuit Judge:

The National Labor Relations Board filed a petition with this court for the enforcement of an order issued by the Board to the Washington, Virginia and Maryland Coach Company directing it to cease and desist from discouraging its employees from becoming members of a local division of a labor organization known as Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, and from interfering in any other manner with its employees in their exercise of their rights to self organization, or to join labor organizations, or to bargain collectively, through representatives of their own choosing; and also affirmatively requiring the Coach Company to offer reinstatement to certain employees, whom it had discharged, and make them whole for any loss of pay they had suffered by reason of their discharge.

The action of the Board was based upon the provisions of the National Labor Relations Act of July 5, 1935, 49 Stat. 449, 29 USCA 151 *et seq.* The statute creates a National Labor Relations Board (Section 3) with power to carry out the declared purpose of Congress to eliminate the causes of substantial obstructions to the free flow of commerce by encouraging the practice of collective bargaining, and by protecting the exercise by workers of full freedom of association, self-organization and designation of representatives of their own choosing for the purpose of negotiating the terms and conditions of their employment. (Section 1).

The definition of the terms "employer" and "employee" contained in Section 2 are broad enough to include persons engaged in commerce of any sort, but the term "commercial" is defined to mean trade, traffic, commerce, transportation or communication among the several states and with foreign countries, and the term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or leading to a labor dispute burdening or obstructing commerce or the free flow of commerce. Section 7 contains the following declaration:

"Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 8 lists the following activities, among others, as unfair labor practices for an employer: (1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7; (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Section 10, entitled "Prevention of Unfair Labor Practices", (a) empowers the Board to prevent any person from engaging in any unfair labor practice affecting commerce; and (b) directs the Board, when it is charged that any person has engaged in such practice, to cause to be served upon him a complaint stating the charges and giving notice of hearing; and confers the right upon the person complained of to file an answer. Testimony may be taken, and if upon all the testimony the Board is of the opinion that the person named has been engaged in any such practice, the Board is required to state its findings of fact and to issue an order requiring the person to cease and desist from such practice. and to take such affirmative action, including reinstatement of employees, with or without back pay as will effectuate the policies of the act.

The proceedings of the Board in the pending case included the filing of charges by the Labor Union, the issuance of a complaint and notice of hearing by the Board against the Coach Company, wherein it was alleged that the Coach Company was engaged in the operation of motor buses for the transportation of passengers and express in interstate commerce between the District of Columbia and points within the States of Virginia and Maryland, and that it had engaged in unfair labor practice within the meaning of sub-sections 1 and 3 of Section 8 of the act by discharging and refusing to reinstate twenty employees because of their membership and activity in the union. The respondent objected to

the jurisdiction of the Board and moved that the complaint be dismissed on constitutional grounds, and without waiving these objections, filed an answer admitting substantially the allegations as to the nature of its business and the discharge and refusal to reinstate the employees named, but denying that it had done so because of their membership or activity in the union.

A hearing was duly had during which the respondent's objections to the jurisdiction and motion to dismiss the complaint were denied, and after the conclusion of the hearing, the Board made findings of fact substantially as follows: The respondent is a Virginia corporation operating motor buses on a regular schedule between points in the District of Columbia and State of Virginia and occasionally operating buses between the District of Columbia and race tracks in the State of Maryland. It holds a certificate of convenience and necessity, in accordance with the Motor Carrier Act of 1935. It operates forty-eight buses and has approximately eighty employees, fifty of whom are drivers. Twenty-seven are garage employees and three are office employees. The respondent discharged eighteen of the twenty-one employees named in the complaint by reason of their union membership and activity, and therefore discriminated against these employees in violation of Section 7 of the act. Four of these employees were bus drivers and the remainder were mechanics and service employees engaged in repairing, cleaning and servicing buses. The Board accordingly found that the respondent had engaged in unfair labor practice as charged and issued the order described.

Section 10 (e) of the act provides that the findings of the Board as to facts, if supported by evidence, shall be conclusive. It is settled that in reviewing the findings of such a body, the court will not consider the testimony anew and make its own findings since the weight to be given to the evidence and the inferences to be drawn therefrom are matters for the fact finding body, and the function of the court in review is merely to reverse and modify such findings as have no evidence to support them and are clearly improper. *Federal Trade Commission* vs. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Helvering* vs. *Rankin*, 295 U. S. 123, 131.

The evidence in the pending case on behalf of com-

plainant tended to show that the discharge of the eighteen men quickly followed the formation of the local union by the employees of the respondent, and in each case, the discharged man was a member of the union. A preliminary meeting of twenty-four employees was held at the home of one of them on February 24, 1936. Shortly afterward, officers of the company began to inquire of certain of the bus drivers as to their membership in the union, suggesting that they give further consideration to the continuance of their affiliation. Subsequently, advertisements for employees were inserted in Washington newspapers, and some applicants were hired to fill the places of the men later discharged. A circular was distributed amongst the employees suggesting that a sure way to acquire a poor standing, both in position and pay, in a business organization is to acquire good standing in a clique composed of members more concerned in serving their own ends than in serving the customers of the business. A subsequent meeting of employees was held on March 3, 1936. One of the men in attendance and subsequently discharged was informed by an officer of the company upon his return to work the same day that the officer would never recognize the union. On the three succeeding days, twenty-one employees, one-fourth of the total force, were discharged. All of them were members of the local union which then had fifty-seven members amongst the respondent's employees. It was a reasonable inference from these facts that the discharge of the men was connected with their membership in the union and there was also direct evidence that the respondent's officials in certain cases expressly stated that the discharges were caused by the union activity of the men concerned.

This direct testimony was denied by the officials of the respondent, whose representatives asserted that each of the eighteen men was discharged for inefficiency. It was also testified on behalf of the company that for some months prior to the discharge, the officers of the company, moved by reports of investigators and complaints of patrons in regard to the conduct of the employees and the condition of the vehicles, had been considering the dismissal of the men whom it let go in March, and instances of improper neglect and incompetency were related. According to this testimony, the difficulties in-

creased from September and October, 1935, to February, 1936, and were the actuating causes which culminated in the conduct on which the complaint was based.

The testimony on behalf of the employer was not without weight, but it nevertheless appeared that the eighteen employees, all of them being union men, were discharged within a period of ten days after the first step towards the formation of the union was taken, and within a week after the officials of the company received information thereof. During this period they were actively endeavoring to prevent the union movement and to persuade their employees from joining or continuing therein. When these efforts failed, the discharges followed. Under these circumstances it cannot be said that there was no substantial evidence to support the Board's findings, and consequently the petition of the Board cannot be dismissed for failure of proof.

The respondent, however, contends that the act is an invalid exercise of Congressional power in violation of the due process clause of the Fifth Amendment in that it denies to an employer the right to hire and discharge his employees at will. Emphasis is placed upon the decisions in *Adair* vs. *United States,* 208 U. S. 161, and *Coppage* vs. *Kansas,* 236 U. S. 1. In the first case, an act of Congress was declared unconstitutional which made it a misdemeanor for a common carrier to discriminate against its employees by discharge or otherwise because of membership in a labor union; and in the second case, a state law was declared invalid which made it unlawful for any individual to coerce or influence any person to enter into an agreement not to join a labor union as a condition of securing or continuing in employment.

These citations are not irrelevant, especially *Adair* vs. *United States,* because there, as here, a carrier engaged in interstate commerce, in the commonly accepted meaning of that term, was involved, and vigorous argument was advanced by counsel for the United States and by the dissenting justices to sustain the act as a reasonable exercise of the power of Congress to regulate commerce between the states. But the difficulties which these decisions oppose to the validity of the National Labor Relations Act seem to us to have been removed by the more recent unanimous decision of the court in

Texas & N. O. R. Co. vs. *Ry. Clerks*, 281 U. S. 548, interpreting the Railway Labor Act of 1926. That statute, in order to avoid any interruption to the operations of carriers engaged in interstate commerce and to provide for the complete independence of carriers and employees in the matter of self-organization, and for the prompt and orderly settlement of disputes concerning working conditions, made it the duty of carriers and employees to exert every reasonable effort to make and maintain agreements concerning working conditions, and if possible, to consider and settle with expedition all such disputes as should arise, and declared that representatives should be designated by the respective parties without interference, influence or coercion exercised by either party over the other. The District Court in the cited case after full hearing issued a temporary injunction restraining the Railroad Company from interfering with its employees in the designation of their representatives, in violation of the statute, but later found that the Railroad Company had endeavored to intimidate its union employees and to coerce them to withdraw from the union and to accept an association formed at the instigation of the carrier as their representative in negotiations between the parties, thus preventing employees from freely designating their own representatives. Thereupon the court directed that the carrier, in order to purge itself from contempt, should disestablish the association, reinstate the union as the representative of the men, and restore to service the men who had been discharged on account of union activity. 24 F. (2d) 426. Subsequently this injunction was made permanent and the contempt order was reaffirmed, 25 F. (2d) 873, 876. The Circuit Court of Appeals found no error in the record, and affirmed the decree, 33 F. (2d) 13, and the Supreme Court also affirmed the decree stating that it did not go beyond the proper enforcement of the Railway Labor Act.

The Supreme Court held that the act conferred the right of independent self organization upon the employees, free from interference on the part of the employer enforceable by the courts, and that the prohibition upon the carrier was not a violation of the Fifth Amendment since it did not interfere with the normal exercise of the right of the carrier to select its employees

and to discharge them. On this ground, *Adair* vs. *United States* and *Coppage* vs. *Kansas* were distinguished. The court said: (570)

"The petitioners invoke the principle declared in *Adair* vs. *United States*, 208 U. S. 161, and *Coppage* vs. *Kansas*, 236 U. S. 1, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds."

While the earlier decisions were distinguished, it is noteworthy that the argument of the court was based, as were the dissents in *Adair* vs. *United States*, upon the power of Congress in the regulation of interstate commerce to safeguard the recognized right of the employees to organize and bargain collectively, to the end that effective negotiations between employer and employees may take place and the amicable settlement of disputes which threaten the agencies of interstate commerce may be promoted. In both instances it was thought that the statute involved was not an unreasonable restriction of the right of an employer to hire and discharge employees in violation of the Fifth Amendment, but rather a proper exercise of the power of Congress to safeguard and regulate interstate commerce. As the same argument may be made with equal application and force to the National Labor Relations Act, any doubt on our part should be resolved in favor of the constitutionality of the act. Indeed it is clear that the rights of employees, set out in Section 7 of the Act, are substantially the same as those secured by the Railway Labor Act of 1926; and that the power of the Board, conferred by Section 10 of the later act, to direct an offending employer to cease violations of the act and to reinstate employees wrongfully discharged, was given

as a means to make effective a policy common to both acts. It is not without significance that when similar means were employed in the contempt order of the District Court in *Texas & N. O. R. Co.* vs. *Ry. Clerks*, the action of the court was approved on appeal.

We reached a similar result with regard to the Railway Labor Act as amended by the Act of July 21, 1934, in our decision in *Virginian Ry. Co.* vs. *System Fed. No. 40*, 84 F. (2d) 641.

The respondent also attacks the act on the ground that, as construed by the Board, it applies not only to interstate commerce but also to the local industry of manufacture and production, and that therefore the whole act falls, notwithstanding the express declaration of Section 15 that if any provision thereof, or the application of such provision to any person or circumstance shall be held invalid, the remainder of the act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. In *Carter* vs. *Carter Coal Co.*, 56 S. Ct. 885, the Supreme Court sustained a similar contention in regard to the Bituminous Coal Conservation Act of 1935 on the ground that Congress there intended to accomplish certain general purposes of labor regulation and price fixing in the production of bituminous coal which were meant to operate together; and since one set of regulations could not be removed without fatal consequence to the whole, the invalidity of the provisions regulating labor conditions in the local industry of mining entailed the destruction of the whole act. There would be some basis for the application of this line of reasoning in the pending case if the Board's construction of the act were tenable, and it were reasonable to interpret the act as applying to intrastate as well as interstate activities. But as we have endeavored to show in an opinion filed this day in *Foster Bros. Mfg. Co.* vs. *National Labor Relations Board*, the power conferred upon the Board to prevent unfair labor practices, as set out in Section 10 (a) of the act, is restricted to unfair labor practices affecting commerce, and commerce is defined to mean trade, traffic, commerce or transportation among the several states or with foreign countries. Congress therefore did not intend to regulate intrastate as well as interstate commerce, and there is no ground for the argument that an important and inseparable part

of the act having been condemned, the whole act must fall.

A decree of this court will therefore be passed enforcing the order of the Board.*

DECREE.

Filed and Entered October 8, 1936

UNITED STATES CIRCUIT COURT OF APPEALS

Fourth Circuit.

No. 4075.

National Labor Relations Board, Petitioner,

vs.

Washington, Virginia and Maryland Coach Company, Respondent.

On Petition for Enforcement of an Order of the National Labor Relations Board.

THIS CAUSE came on to be heard upon the petition of the National Labor Relations Board for the enforcement of a certain order entered by it on the 21st day of

*The constitutionality of the National Labor Relations Act, insofar as it affects interstate commerce, was sustained in National Labor Relations Board vs. Associated Press, (CCA2) July 13, 1936, 3 L. W. 1160. Compare National Labor Relations Board vs. Jones and Laughlin Steel Corp., (CCA5) June 15, 1936, 3 L. W. 1084; National Labor Relations Board vs. Fruehauf Trailer Co., (CCA6) June 30, 1936, 3 L. W. 1123; National Labor Relations Board vs. Friedman-Harry Marks Clothing Co., Inc. (CCA2) July 13, 1936, 3 L. W. 1162, in which the act was held inapplicable to the business of manufacturing.

May, 1936, in a proceeding before it No. C-63, entitled "In the Matter of Washington, Virginia and Maryland Coach Company, Inc., and Amalgamated Association of Street Railway and Motor Coach Employees of America, Local Divison 1097 et al.", and upon the transcript of the record in said proceeding, certified and filed in this court; and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, it is ordered, adjudged and decreed this 8th day of October, 1936, by the United States Circuit Court of Appeals for the Fourth Circuit, that the said order of the said Board in said proceeding be enforced, and that the said Washington, Virginia and Maryland Coach Company abide by and perform the directions of the Board in said order contained.

JOHN J. PARKER,
Senior Circuit Judge.
ELLIOTT NORTHCOTT,
United States Circuit Judge.
MORRIS A. SOPER,
United States Circuit Judge.

STIPULATION AS TO EXHIBITS.

Filed October 10, 1936.

(Style of Court and Title Omitted.)

IT IS HEREBY STIPULATED AND AGREED by and between the above-named parties through their respective attorneys that the exhibits which were introduced in evidence in the proceeding before the National Labor Relations Board were filed with the United States Circuit Court of Appeals for the Fourth Circuit. In the proceeding before the United States Circuit Court of Appeals for the Fourth Circuit, the above-named parties stipulated and agreed that said exhibits did not need to be printed as part of the printed record on appeal in said United States Circuit Court of Appeals for the Fourth Circuit, but that either party could refer to said exhibits in its brief or oral arguments. Said exhibits remained as part of the record before said United States Circuit Court of Appeals for the Fourth Circuit as physical exhibits and were not printed.

IT IS FURTHER STIPULATED AND AGREED by the above-named parties through their respective attorneys that said exhibits need not be printed in the record before the Supreme Court of the United States, but that said exhibits shall be filed with the Supreme Court of the United States as physical exhibits. The above-named parties may refer to said exhibits in their briefs or arguments and said exhibits shall be available for the inspection of the Supreme Court of the United States, and said exhibits shall remain as part of the record before the Supreme Court of the United States.

ROBERT E. LYNCH,
WM. J. HUGHES, JR.,
Attorneys for Washington, Virginia & Maryland Coach Company.

CHARLES FAHY,
ROBERT B. WATTS,
Attorneys for National Labor Relations Board.

ORDER AS TO EXHIBITS.

Filed October 14, 1936.

(Style of Court and Title Omitted.)

UPON CONSIDERATION OF THE STIPULATION OF COUNSEL,

IT IS ORDERED that the Clerk of this Court do certify and transmit to the Clerk of the Supreme Court of the United States, for use in said Supreme Court in the above-entitled case, all of the exhibits which were filed in this Court in this case, and that the Clerk of the said Supreme Court do return said exhibits to the Clerk of this Court after this case has been disposed of by the said Supreme Court.

JOHN J. PARKER,
Senior Circuit Judge.

October 14, 1936.

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
Fourth Circuit, ss:

I, CLAUDE M. DEAN, Clerk of the United States Circuit Court of Appeals for the Fourth Circuit, do certify that the foregoing is a true copy of the entire record and proceedings, except the exhibits which are certified separately, in the therein entitled cause, as the same remain among the records and files of the said Circuit Court of Appeals.

IN TESTIMONY WHEREOF, I hereto set my hand, and affix the seal of the said United States Circuit Court of Appeals for the Fourth Circuit, at Richmond, Virginia, this 15th day of October, A. D. 1936.

(Seal of Court)

CLAUDE M. DEAN, Clerk,
U. S. Circuit Court of Appeals,
Fourth Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 26, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted, and the case is assigned for argument immediately following No. 365

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 469

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petition for Writ of Certiorari to the Circuit Court of Appeals for the Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

ROBERT E. LYNCH,
Investment Building,
Washington, D. C.,
Attorney for Petitioner.

WILLIAM E. LEAHY,
WILLIAM J. HUGHES, JR.,
REEVES R. HILTON,
Investment Building,
Washington, D. C.,
Of Counsel.

Lynon Printing Co., Inc., Washington, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. ——

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petition for Writ of Certiorari to the Circuit Court of Appeals for the Fourth Circuit

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PETITION FOR WRIT OF CERTIORARI

Comes now petitioner herein, the Washington, Virginia and Maryland Coach Company, and respectfully prays for the issuance of a writ of certiorari to review the judgment of the Circuit Court of Appeals for the Fourth Circuit herein.

Opinions Below

The findings of fact and the order of the National Labor Relations Board (R. 528-548), are not yet reported, nor the Opinion of the Circuit Court of Appeals (R. 589).

Jurisdiction

The judgment of the Circuit Court of Appeals was entered October 6, 1936 (R. 598, 599). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial

Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

Questions Presented

1. Whether, as applied to petitioner, a bus company admittedly operating in interstate commerce, the National Labor Relations Act is a valid exercise of the power of Congress to regulate commerce.

2. Whether the provisions of the Act herein involved violate Article 3 of the Constitution in that they improperly delegate judicial powers to the National Labor Relations Board.

3. Whether the provisions of the Act herein involved violate the Fifth Amendment in that they deprive petitioner of liberty or property without Due Process of Law.

4. Whether the provisions of the Act herein involved violate the Seventh Amendment in that they improperly deprive petitioner of the right of trial by jury.

Statute Involved

The National Labor Relations Act is already before this Court *in toto* as an Appendix to the Government's Petition in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, No. 419 of the present term.

STATEMENT

The National Labor Relations Board filed a Petition with the Court below for the enforcement of an order issued against petitioner directing it to cease and desist from discouraging its employees from becoming members of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America and from interfering in any other manner with its employees in their exercise of their rights of self-organization or to join labor organizations or to bargain collectively, through representatives of their own choosing (R. 586, 548). The order also affirmatively required petitioner to offer reinstatement to the em-

ployees it had discharged, eighteen in number, with back pay to the date of their alleged wrongful discharge (R. 548). The order resulted after a hearing before the Board in which petitioner, appearing specially, participated only after objecting to the jurisdiction of the Board on Constitutional grounds, which objections were not waived (R. 26, 592). The petitioner admitted that it was engaged in interstate commerce, also the discharge of the employees, but denied that the discharge of these employees had anything to do with union activities (R. 28-37).

At the hearing, the principal evidence for the Board was that the eighteen employees in question, four of them bus drivers and the remainder mechanics and service employees engaged in repairing and servicing the busses, were discharged shortly after the formation of a local union in petitioner's organization, which theretofore had possessed no union. Each of the discharged men was a member of the union. There was testimony, denied by petitioner's officers, that about the time of a preliminary meeting the Company began to enquire of the bus drivers as to their membership in the union, suggesting that they give further consideration to the matter of becoming or remaining members. Advertisements were placed in a newspaper calling for new men to be hired. A circular mildly adverse to the formation of "cliques" and part of a set to be distributed each week was claimed by the Board to have been distributed on this particular occasion with the intention of discouraging the formation of the union. This was denied by petitioner. There was also evidence that one of the men discharged was told by an officer of the Company that the officer would never recognize the union (R. 528).

The Company's position was that almost six months prior to the discharge of the men it had observed a growing slackness and inefficiency among its employees (R. 409-410, 46, 47, 56, 57, 60); that it had made preparations for their discharge for a long period of time prior thereto; that for several months prior to any hint of union activity it had

broken in new bus drivers anticipating the discharge of some of the old ones (R. 340, 341), and that the discharge at about the time of the formation of the union was the result of the above and precipitated by certain alarming stories that had come to the ears of the Company about threats to allow a bus to run wild and to tamper with brakes (R. 50, 60-63, 69, 77-82). The President of the Company testified that it was the accumulation of difficulties which finally drove him to "clean house" about the time of the formation of the union (R. 46, 48, 56, 58, 409, 410).

The Court below on the basis of this Court's decision in *Federal Trade Commission* v. *Algoma Lumber Company*, 291 U. S. 67, 73, held that, although the testimony of the Company was not without weight, still bearing in mind the circumstances of the discharge and that all the men were union men, it could not say that there was no substantial evidence to support the Board's findings (R. 594).

The order of the Board, approved by the Court below, was not only preventive in character but required an offer of reinstatement to the eighteen employees to their former positions, with all rights and privileges previously enjoyed and also required the Company to make the said employees whole for any loss of pay suffered by reason of their discharge (R. 548, 590, 598).

Basis of Decision Below

On the above state of facts the Court below held that the decisions of this Court in *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, cited by petitioner against the Constitutionality of the Act, were not irrelevant but that any difficulties occasioned by them seemed to have been removed by this Court's decision in *Texas and N.O.R. Co.* v. *Railway Clerks*, 281 U. S. 548, interpreting the Railway Labor Act of 1926 (R. 594-597). No mention was made by the Court below of petitioner's contentions that the Railway Labor Act of 1926 considered in the Texas case was an Act voluntary and not compulsory in character; that the

order restoring back pay in the Texas case was sustainable only upon the theory of the voluntary feature of the Act and upon the further fact that such restoration constituted a reasonable purgation of the contempt resulting from the disobedience of the Court's order in the Texas case. Nor did the Court below deal with petitioner's numerous other objections, such as that the order of restoration with back pay amounted to a mandatory injunction requiring specific performance of a personal service contract, and the further argument that the Act herein as applied to the circumstances of the particular case operated to cut down an employer's right to hire and discharge at will by thrusting the burden of proof upon the employer to prove to the satisfaction of the Labor Relations Board in Washington that a discharge of employees at or about the time of the formation of a labor union was *not* because of the formation of the union. The impairment of such right was contended by petitioner to be in violation of the Fifth Amendment.

The Court disposed of petitioner's contention that if the Act was unconstitutional as applied to intrastate commerce it was void as a whole, the intrastate regulation being inseparable from the interstate, by citing its decision rendered the same day in *Foster Brothers Manufacturing Co., Inc.* v. *National Labor Relations Board* (unreported) wherein it held that Congress never intended the Act to apply to intrastate activities. Hence the Court below held that no question of separability was presented (R. 597).

Reasons for Allowance of Writ

This Court already has before it the following allegedly *intra*-state cases arising under the National Labor Relations Act:

National Labor Relations Board v. *Jones & Laughlin Steel Company*, No. 419, this term;

National Labor Relations Board v. *Fruehauf Trailer Co.*, Nos. 420, 421, this term;

National Labor Relations Board v. *Friedman—Harry Marks Clothing Co., Inc.*, Nos. 422, 423, this term.

All the above are pending in this Court on petitions for writs of certiorari.

The Associated Press v. *National Labor Relations Board*, No. 365, this term, may be referred to as a border line case wherein there may be some question as to whether its business is purely intra-state or involves inter-state commerce.

The present case is believed to be the first case involving the National Labor Relations Act to reach this Court wherein the Act has been applied to a company admittedly engaged in *inter-state* commerce and where the order requires restoration to duty with back pay.

It would seem that it might be convenient to this Court and to the Government to have presented to it for its consideration in passing upon the Constitutionality of the Act not only allegedly *intra-state* cases, but a case like the present admittedly involving *inter-state* commerce but still assailing the Constitutionality of the Act on partly the same and additional grounds. As this Court is familiar with the various decisions cited in the Petition in *Associated Press* v. *National Labor Relations Board*, No. 365, as showing conflicts of decisions among the various Circuits on the main Constitutional questions involved, petitioner feels it unnecessary to refer to such decisions in the present Petition. Petitioner specifically argued below that if the Act herein be held to be unconstitutional with respect to *intra*-state commerce it was likewise unconstitutional as applied to the present case, the constitutional and unconstitutional provisions being inseparable. The Court below in its Opinion referred to this argument but stated that as it had by its decision in *Foster Brothers Manufacturing Co.* v. *National Labor Relations Board* (C.C.A., 4th—Oct. 6, 1936, unreported), handed down at the same time, held that

the Act was not intended by Congress to apply to so-called *intra*-state cases, no question of separability was presented. The decision below in this aspect is impliedly in conflict with the decisions of the various Circuit Courts of Appeals in

National Labor Relations Board v. *Jones & Laughlin Steel Company*, No. 419, this term;
National Labor Relations Board v. *Fruehauf Trailer Co.*, Nos. 420, 421, this term;
National Labor Relations Board v. *Friedman—Harry Marks Clothing Co., Inc.*, Nos. 422, 423, this term.

In each of the above cases the Court seems to have held, following this Court's decision in *Carter* v. *Carter Coal Co.*, 80 L. Ed. 749, that the Act herein was unconstitutional with respect to so-called *intra*-state activities. The present case, therefore, presents an additional element of conflict of decision.

The public importance of the questions involved in the present case has already been stressed in the cases in this Court above cited.

CONCLUSION

Wherefore petitioner prays for the issuance of a writ of certiorari to review the judgment below.

Respectfully submitted,

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 469.

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF ON BEHALF OF PETITIONER.

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ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT.

BRIEF ON BEHALF OF PETITIONER.

OPINION BELOW.

The Opinion of the Circuit Court of Appeals is reported in 85 F. (2d) 990. It will be found in the Record at page 589.

JURISDICTION.

The decree of the United States Circuit Court of Appeals for the Fourth Circuit was entered October 8, 1936, (R. 598). The Petition for a Writ of Certiorari was filed herein October 17, 1936, and was granted October 26, 1936.

(R. 601.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended, and Section 10 (e) of the National Labor Relations Act, (29 U. S. C. A., Sec. 151).

STATUTE INVOLVED.

The National Labor Relations Act may be found at 29 U. S. C. A., Sec. 151; it is before this Court *in toto* as an Appendix to Petitioner's brief in *The Associated Press* v. *National Labor Relations Board,* No. 365 of the present term.

QUESTIONS PRESENTED.

Petitioner is an interstate bus company with eighty (80) employees. In December of 1935 after noticing growing inefficiency, increase in break-downs, disaffection, etc., the company determines to "clean house" and starts breaking in new bus drivers. In February of 1936 it finds out that a professional union organizer, disguised as a workman, has gotten a job with Petitioner under false pretenses and has "organized" the men. Rumors of sabotage increasing, the company on March 4, 1936, "cleans house", discharging 18 out of 57 union men, retaining, however, the President of the Union. The company proves the inefficiency of each individual discharged, though the Board refuses to allow the company to put in evidence their efficiency records. There is conflicting testimony that the company told several men they were discharged for union activities. The Board orders reinstatement with back pay, around $25,000 to date —to be paid Union men who haven't worked. On these facts the following questions are presented:

1. Is the Act as construed and applied to Petitioner a valid regulation of interstate commerce?

2. If the Act is declared unconstitutional as applied to local industry in the companion cases now before this Court, is it not unconstitutional as to Petitioner, the Act revealing a comprehensive plan to regulate all industry, intra-state as

well as interstate, and the one application being inseparable from the other?

OUTLINE OF ARGUMENT.

Contrary to the decision below, the law is that where, as here, a constitutional right is involved and the jurisdiction of the Court is at issue, the Courts can make their own independent determination of the facts.

On the facts, Petitioner has met the burden imposed by the Act (as construed by the Board) and has justified beyond a reasonable doubt its right to discharge the eighteen employees.

As to the law, the Act herein is unconstitutional as a regulation of both intra-state and inter-state commerce. To avoid burdening the Court, Petitioner will not repeat the arguments to this effect in the companion cases herein, but will devote the present Brief to discussing the possibility that the Act may be declared unconstitutional as to intra-state or local industries in one of the companion cases herein, in which event the question arises: if the Act is unconstitutional as to intra-state or local industries, is it's application to Petitioner, an inter-state bus company, separable or must the entire Act fall. As to this question of Inseparability, Petitioner's argument is:

(1) that it has the necessary standing to argue Inseparability; (2) that if the Act is unconstitutional as to intra-state or local industry, it is a nullity, the "Findings and Policy" and the Act itself disclosing objectives which could not possibly be achieved or even intelligently sought after, by application to Petitioner and other inter-state companies alone. Hence it's application to Petitioner would be for a purpose other than intended by the Act itself and the judgment below should be reversed.

STATEMENT OF FACTS.

Preliminary: The Board's Petition, the Order of the Board and the Decree of the Court Below:

The National Labor Relations Board, respondent herein, filed a petition in the Court below, the Circuit Court of Appeals for the Fourth Circuit, (R. 1), for the enforcement of its Order of May 21, 1936, requiring Petitioner to cease and desist from certain alleged unfair labor practices and further ordering it to take certain affirmative action, namely, offer re-employment to 18 discharged employees and make them whole for any loss of pay they had suffered by reason of the discharge, (R. 4). The Court below granted Respondent's Petition, (R. 598), and the present certiorari followed.

At the outset of the proceedings before the Board, Petitioner appeared specially and filed an objection to the jurisdiction of the Board asserting the unconstitutionality of the National Labor Relations Act on the same grounds as in the companion cases herein (R. 26-28) Being overruled Petitioner, without waiving its objection to the Board's jurisdiction, filed an Answer to the Board's Complaint, (R. 28).

Charges in the Board's Complaint:

The Board's complaint herein, (R. 19), resulted from a charge, (R. 9), and a supplemental charge, (R. 14), by Local No. 1079 Amalgamated Association of Street, Electric Railway and Motor Coach Employees. It alleges that Petitioner operates and controls motor bus transportation lines for the transportation of passengers and express from Washington, D. C., to various places in Virginia and Maryland and return; that in connection therewith it maintained a garage and repair shop in Clarendon, Virginia, wherein the busses are serviced and repaired, in the course of interstate transportation of passengers above referred to, (R. 20, Paragraphs 2 and 3); that these operations of Petitioner occurred in the course and current of commerce within the

District of Columbia and among the States and between the District and the States and are an integral part of the operations of an instrumentality of such commerce and constitute commerce among the States and between the Distict of Columbia and the States, (R. 20-21, Paragraph 4). It is then alleged that Petitioner discharged 21 employees, bus drivers and mechanics, and had refused to re-instate them, for the reason that they joined the labor union in question and engaged in concerted activities with other employees for the purpose of collective bargaining and other mutual aid and protection, (R. 21, Paragraph 6). By this action of Petitioner it is alleged Petitioner interfered with, restrained and coerced and presently was interfering with, restraining and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, and that by such acts Petitioner did thereby engage in and was thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision 1 of the Act, (R. 22, Paragraph 7). It is also alleged the discharge of the men and the refusal to re-instate them constituted discrimination in regard to the hire and tenure of employment of the men, and that the Petitioner did thus discourage membership of the men in the labor union, and that this was likewise an unfair labor practice within the meaning of Section 8, Subdivision 3 of the Act, (R. 22, Paragraph 8).

The following is then alleged:

> "The aforesaid unfair labor practices of the respondent have occurred and are occurring in the course and current of commerce within the District of Columbia and among the States and between the District of Columbia and States of the United States and, on the basis of experience in the motor bus transportation and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof, by impairing the efficiency, safety and operation of instrumentalities of such commerce." (R. 23, Paragraph 9.)

Petitioner's Answer to the Board's Complaint:

Without waiving its Constitutional objections asserted in its special appearance Petitioner in its Answer substantially admitted the allegations of the Complaint with respect to the nature of its business. It likewise admitted that it had discharged and refused re-instatement to the employees named in the Complaint but denied that it had done so because of their membership or activity in the union being formed, (R. 28-37). It stated that it had noticed growing inefficiency among the men since September of 1935 about which time a professional union organizer disguised as a workman obtained employment and began to organize the union. From that time on there was disaffection among the men, and the work did not seem to get done properly. The management thought that something out of the ordinary was occurring but was unable to locate what it was. It tried various remedial measures, but no permanent remedy was found. These conditions continued until about February 1, 1936, at which time the management determined that many of the employees were becoming so inefficient that it would be necessary to replace them in the near future. About February 1 it began to "break in" drivers to take the place of the six bus drivers who subsequently were discharged, and who are named in the Complaint. The management also held conferences early in February with a view to weeding out the less efficient employees in the repair shop. It was not until February 28 that the management discovered that a union was being formed. About this time a rumor got out that there was going to be a strike and various patrons telephoned or called wanting to know whether the service would be discontinued. Reports also were spread about that the brakes on the busses were faulty and there was danger that the drivers would lose control of the busses. Considering the entire situation the management determined around February 28 that drastic action must be taken and so concluded

to discharge the six bus drivers above referred to and to weed out the less efficient men in the repair shop. This was done.

Petitioner in its Answer reiterated its objections to the Constitutionality of the Act already filed with the Board and alleged that if under the above circumstances it was a violation of the Act to discharge the men, the Act as construed and applied constituted a deprivation of Petitioner's rights under the Due Process Clause of the Fifth Amendment, (R. 28-37).

The Board's Findings of Fact:

The Board found after a Hearing that Petitioner had illegally discharged 18 of the 21 mentioned, 4 being bus drivers and the remaining 14 mechanics and service employees, (R. 532, Finding 11 (1 to 18)) the object being to weed out the employees active in union affairs (R. 539). As to the shop employees it found that they constituted an integral part of petitioner's interstate transportation system, (R. 545, Finding 13). The Board found that the discharges constituted a discrimination in regard to the hire and tenure of employment within the meaning of Section 7 of the Act, and that, therefore, Petitioner was engaged in unfair labor practices within the meaning of Section 8, Subdivisions 1 and 3 of the Act, (R. 539, Finding 12).

Effect of the Unfair Labor Practices Upon Inter-State Commerce:

The Board found that the alleged unfair labor practices occurred in the course and current of inter-state commerce, (R. 545, Finding 13), and that on the basis of its experience in motor bus transportation Petitioner's conduct in discharging the 18 employees burdened and obstructed inter-state commerce, and led and tended to lead to labor disputes burdening and obstructing such commerce and the free flow thereof, by impairing the efficiency, safety and

operation of instrumentalities of commerce, (R. 546, Finding 14). Finally the Board found that Petitioner's alleged unfair labor practices affected commerce within the meaning of Section 8, Subdivisions 1 and 3 and Section 2, Subdivisions 6 and 7 of the Act, (R. 547, Paragraphs 3 and 4).

The Board's Order:

The Board ordered Petitioner to cease and desist: (a) from discouraging membership in the union by discrimination in regard to the hire and tenure of employment or any term or condition of employment; (b) from interfering with, restraining or coercing its employees in the exercise of their rights as guaranteed in Section 7 of the Act, (R. 548).

The Board further ordered Petitioner to offer to the 18 employees reinstatement to their former positions, with all rights and privileges previously enjoyed, and make such employees whole for any loss suffered by reason of their discharge, (R. 548).

Petitioner's Contentions in the Court Below:

In the Court below Petitioner undertook to prove from the record that every contention made in its Answer as to its reasons for discharging the employees in question was fully substantiated by the Record. It faced the Court with the practical problem of how an employer could exercise his right to discharge his employees about the time of the formation of a labor union. It asserted that on the facts in the present case it had a right "to clean house" at the time in question, and that any Act of Congress which was so interpreted by a Board in Washington that the burden of proof in connection with the discharges of the employees herein was thrust upon the employer such that he was required to show that the employees were *not discharged* because of their union activities operated to destroy the employer's right to discharge and thus deprived him of a substantial

right in violation of the Due Process Clause of the Fifth Amendment. Petitioner also analyzed the data with respect to the discharge of each individual employee and showed, we contend, ample reason for the discharge of every single one of them. It showed that only 20 of the 57 members of the union had been discharged, and that the President of the union was still in the Company's employ. It also complained of the Board's refusal to permit it to put into evidence the efficiency records of the various employees discharged and to compare these records with the efficiency records of the employees retained. The reason for the Board's refusal to permit this evidence was some sort of a notion on the part of the Examiner, (a member of the Board) that the efficiency records did not measure up to his standard of accuracy, and he did not know whether they had been kept properly or not. It was pointed out to him that it made no difference whether the records were accurate or inaccurate; that if as a result of these records the Company came to the conclusion that a state of inefficiency existed and later acted upon it, they were admissible to overcome the seeming presumption that the men were discharged because of union activities.

Petitioner also urged that the Act was unconstitutional as applied to the regulation of intra-state manufacturing activities and hence was unconstitutional as a whole, revealing as it did a comprehensive attempt to regulate all industry, intra-state as well as inter-state, and that the allegedly Constitutional application of the Act to inter-state commerce was inseparable from the seemingly unconstitutional application to purely intra-state industry.

BASIS OF DECISION OF THE COURT BELOW.

The Court below held that while the testimony on behalf of the employer "was not without weight", it could not be said that there was no substantial evidence to support the Board's findings, citing

Federal Trade Commission v. *Algoma Lumber Co.*, 291 U. S. 67, 73;
Helvering v. *Rankin*, 295 U. S. 123, 131;

to the effect that bearing in mind Section 10 (e) of the Act provides that findings of the Board as to facts if supported by evidence shall be conclusive, the above two cases prevented the Court from considering the testimony anew and making its own findings (R. 594, 592).

As to *Adair* v. *U. S.*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, urged by Petitioner on the Constitutional questions, the Court held that these decisions had impliedly been overruled or distinguished by this Court's decision in *Texas and New Orleans R. Co.* v. *Railway Clerks*, 281 U. S. 548 (R. 594-596). As to Petitioner's contention that the Act applied not only to inter-state commerce but to local industry and being unconstitutional as to the latter was unconstitutional in its entirety, the Court below referred to its Opinion handed down the same day as the decision in the present case in *Foster Bros. Manufacturing Co.* v. *National Labor Relations Board*, 85 F. (2d) 984, wherein it held that Congress in the Act herein never intended to regulate intrastate commerce, the power conferred upon the Board in Section 10 (a) of the Act to prevent unfair labor practices being restricted to unfair labor practices "*affecting commerce*". Hence the Court held that there was no ground for Petitioner's argument that an important and inseparable part of the Act having been condemned the whole Act must fall, (R. 597-598).

SPECIFICATION OF ERRORS TO BE RELIED ON.

1. The Court erred in sustaining the National Labor Relations Act as a valid exercise of the power of Congress to regulate commerce as against Petitioner's claim it is in violation of the First and Tenth Amendments.

2. The Court erred in sustaining the constitutionality of the Act herein as against Petitioner's contention that the

Act was unconstitutional in that it improperly delegated judicial powers to the National Labor Relations Board.

3. The Court erred in sustaining the constitutionality of the Act herein as against Petitioner's contention that as construed and applied herein it deprives Petitioner of his liberty and property without Due Process of Law in violation of the Fifth Amendment.

4. The Court erred in sustaining the constitutionality of the Act herein as against Petitioner's claim that the Act, being unconstitutional as an attempted regulation of intra-state commerce, was likewise unconstitutional as a regulation of inter-state commerce, the provisions of the Act as to the two types of commerce being inseparable.

5. The Court erred in respect of Error Four above in holding that no question of separability was presented by reason of its theory, announced in *Foster Bros. Manufacturing Co.* v. *Board,* 85 F. (2d) 984, that Congress never intended the Act to apply to intra-state commerce.

6. The Court erred in sustaining the order of the Board holding that upon the evidence Petitioner was guilty of an unfair labor practice within the meaning of Section 8 of the Act.

7. The Court erred in sustaining the action of the Board in preventing Petitioner from submitting in evidence the efficiency records of the union men discharged, together with the efficiency records of the non-union men not discharged in order that a comparison between the two sets of employees might be made.

8. The Court erred in sustaining the action of the Board in thrusting upon Petitioner the burden of proof that the union employees discharged were *not discharged* for union activities.

9. The Court erred in sustaining the action of the Board in thrusting the burden of proof upon Petitioner that the union men discharged were discharged for good reasons as against Petitioner's claim that Petitioner had a constitutional right to discharge them for no reason at all, in contrast to a *good* reason.

10. The Court erred in requiring the re-instatement of the discharged employees with back pay, thus depriving Petitioner of its right to trial by jury, in violation of the Seventh Amendment and requiring Petitioner to offer to make a contract, for an indefinite period with the employees, in violation of the equitable principle that Courts cannot make or require the making of contracts and in any case will not require the specific performance of a personal service contract.

ARGUMENT.

Part I.

The Evidence Does Not Sustain the Findings.

A. Where a constitutional right is alleged to have been violated the federal courts can make their own independent determination of all questions of law and fact.

The Court below stated:

> "Section 10 (e) of the act provides that the findings of the Board as to facts, if supported by evidence, shall be conclusive. It is settled that in reviewing the findings of such a body, the court will not consider the testimony anew and make its own findings since the weight to be given to the evidence and the inferences to be drawn therefrom are matters for the fact finding body, and the function of the court in review is merely to reverse and modify such findings as have no evidence to support them and are clearly improper. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Helvering* v. *Rankin*, 295 U. S. 123, 131." (R. 592).

The Court apparently examined the Record from the basis of the above statement and the cases cited. It stated:

> "The testimony on behalf of the employer was not without weight, but it nevertheless appeared that the eighteen employees, all of them being union men, were discharged within a period of ten days after the first

step towards the formation of the union was taken, and within a week after the officials of the company received information thereof. During this period they were actively endeavoring to prevent the union movement and to persuade their employees from joining or continuing therein. When these efforts failed, the discharges followed. Under these circumstances it cannot be said that there was no substantial evidence to support the Board's findings, and consequently the petition of the Board cannot be dismissed for failure of proof." (R. 594.)

It is submitted that where the action of a partisan Board composed of laymen is alleged to be in violation of a person's constitutional rights the power of the Court to examine the facts is considerably broader than as stated in the *Algoma Lumber Company case, supra.* Thus in *Crowell* v. *Benson,* 285 U. S. 22, 60 this Court said:

"In cases brought to enforce constitutional rights, the judicial power of the United States necessarily extends to the independent determination of all questions, both of fact and law, necessary to the performance of that supreme function. The case of confiscation is illustrative, the ultimate conclusion almost invariably depending upon the decisions of questions of fact. This court has held the owner to be entitled to 'a fair opportunity for submitting that issue to a judicial tribunal for determination upon its own independent judgment as to both law and facts.' *Ohio Valley Water Co.* v. *Ben Avon,* 253 U. S. 287, 64 L. Ed. 908, P. U. R. 1920E, 814, 40 S. Ct. 527, supra. See also *Prendergast* v. *New York Telegraph Co.,* 262 U. S. 43, 50, 67 L. Ed. 853, 858, 43 S. Ct. 466; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 74 L. Ed. 524, 50 S. Ct. 220, supra; *Phillips* v. *Commissioner of Internal Revenue,* 283 U. S. 589, 600, 75 L. Ed. 1289, 1299, 51 S. Ct. 608." (*Crowell* v. *Benson,* 285 U. S. at 60, 61).

A case of confiscation under the Fourteenth Amendment is no different in principle from one of outright usurpation under the Fifth. We know of no reason why, where an Act

is constitutionally assailed, utility companies should have a monopoly upon the Federal Courts' judicial examination either of facts tending to show jurisdiction in a Federal Board initially to act or facts necessary to be found to sustain the Board's action.[1] Certainly, as suggested in *Crowell* v. *Benson* above there can be no question of this Court's right to examine the facts in respect of confiscatory rates in utility cases. As recently as *St. Joseph Stock Yards Co.* v. *U. S.*, 298 U. S. 38, this Court reiterated the rule. In that case the District Court felt that it was bound to accept the findings of the Secretary of Agriculture on the question of confiscation, if such findings were supported by substantial evidence, and that it was not within the judicial province to weigh the evidence and pass upon the issues of fact. When the case came to be argued in this Court the Government's chief contention was, not that the District Court was right in this expression of the law, but that in spite of what the District Court said it had in fact made an independent examination of the facts. This Court in deciding the case drew a distinction between the scope of judicial review where the action assailed is within the scope of legislative authority, and action which transcends the limit of legislative power. In the first case the Court naturally does not sit as a board of revision to substitute its judgment for that of the Legislature or its agents as to matters within the province of either, and so when it appoints an agent to act within the sphere of legislative authority it may endow the agent with power to make findings of fact which are conclusive, assuming there is a fair hearing, etc. In such cases this Court said the judicial enquiry into the facts goes no further than to ascertain whether there is evidence to support the findings, the weight of the evidence being a matter for the administrative Board.

But, this Court said, the rate-making power is limited by the Constitution, which prohibits the deprivation of prop-

[1] See cases collected in Mr. Justice Brandeis' concurring Opinion in *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38.

erty without Due Process of Law. Upon such a charge the power of the Court to examine the evidence is entirely different. This Court said, and it is a strong and able statement:

> "Legislative agencies, with varying qualifications, work in a field peculiarly exposed to political demands. Some may be expert and impartial, others subservient. It is not difficult for them to observe the requirements of law in giving a hearing and receiving evidence. But to say that their findings of fact may be made conclusive where constitutional rights of liberty and property are involved, although the evidence clearly establishes that the findings are wrong and constitutional rights have been invaded, is to place those rights at the mercy of administrative officials and seriously to impair the security inherent in our judicial safeguards. That prospect, with our multiplication of administrative agencies, is not one to be lightly regarded. It is said that we can retain judicial authority to examine the weight of evidence when the question concerns the right of personal liberty. But if this be so, it is not because we are privileged to perform our judicial duty in that case and for reasons of convenience to disregard it in others. The principle applies when rights either of person or of property are protected by constitutional restrictions. Under our system there is no warrant for the view that the judicial power of a competent court can be circumscribed by any legislative arrangement designed to give effect to administrative action going beyond the limits of constitutional authority. This is the purport of the decisions above cited with respect to the exercise of an independent judicial judgment upon the facts where confiscation is alleged." (St. Joseph Stock Yards Co. v. U. S., 298 U. S. 38).

We assert, therefore, without any further examination of the authorities that the Court below had power to make its independent examination of the testimony, and this Court has the same power. In the present case this question is not of any great complexity and so the chief objection noted in Mr. Justice Brandeis' concurring Opinion in *St. Joseph*

Stock Yards Co. v. *U. S., supra,* i.e., the magnitude of the task of judicial re-examination of facts, does not apply.

It may be noted that in *Bradley Lumber Co.* v. *National Labor Relations Board,* 84 F. (2) 97, 100 the Circuit Court of Appeals for the Fifth Circuit, contrary to the decision below, specifically held in a case similar to the present that the findings of the Board were subject "to a full judicial review".

The question, therefore, before this Court on the present record is whether, the union being composed of 57 employees, the discharge of 18 union men under the facts and circumstances of the case amounted to an unfair labor practice within the meaning of the Act, and whether the Act as construed and applied with respect thereto did not amount to a deprivation of Petitioner's rights under the Due Process Clause. If the present Record shows that the discharge of the 18 union men was not because of any union activities but a mere exercise of the normal right of discharge it follows that such discharges cannot constitute an unfair labor practice within the meaning of the Act, and hence the Act being construed by the Board and the Court below to penalize such a discharge has deprived petitioner of its right of freedom of contract or, in another aspect, its property right to manage its own business, in violation of the Due Process Clause of the Fifth Amendment. The enquiry is, therefore, in this respect a question of fact; in another respect, namely, as to whether the decision of the Board and the Court below construing the Act has not operated to thrust the burden of proof upon the employer to justify a discharge of union men about the time of the formation of a union, is a question of mixed law and fact which likewise, under the authorities above cited, is open to re-examination by this Court.

We proceed, therefore, to an examination of the evidence.

B. The evidence: preliminary:

It is not even alleged in the Complaint herein that the discharges herein were for the *purpose or intent* of interfering with, restraining or coercing the employees in the exercise of their right of self-organization conferred by Section 7 of the Act. It is merely alleged that by the discharges Petitioner "*did* interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed by Section 7 of the National Labor Relations Act", (R. 22). Petitioner objected to the jurisdiction of the Board on this ground but was overruled on the ground Petitioner was "quibbling" (R. 40-42). In other words, the position of the Board must be that no matter what the intent or purpose of the discharges if in fact they were detrimental to the right of self-organization conferred by Section 7 of the Act they may be prohibited. Logically, therefore, the Board's position must be that even if the discharges constituted the "normal exercise of the right of the carrier to select its employees or to discharge them" as stated by this Court in *Texas and New Orleans R. Co.* v. *Brotherhood*, 281 U. S. 548, 571, still, if the *effect of the discharges* is to interfere with the right of self-organization, the employer is forbidden to act. This position seems clearly at variance with this Court's decision in *Texas and New Orleans R. Co.* v. *Brotherhood, supra*, and *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369, wherein the normal exercise of the right to hire and discharge was upheld. We feel, therefore, that the burden is upon the Board to prove, even though it is not alleged, that the discharges in question were *for the purpose and with the intent of* discouraging the formation of the labor union. Unless there is proof of such an intent it is submitted the Statute would be clearly unconstitutional in penalizing the bare acts themselves for this would amount to a clear diminution of the employer's Constitutional right to hire and discharge at will.

C. The practical problem of how an employer can exercise his right to discharge his employees about the time of the formation of a labor union.

The right to hire and fire has been repeatedly upheld in the Courts. (*Texas and N. O. R. Co.* v. *Brotherhood*, 281 U. S. 548, 571; *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369.) Even the present Act does not—ostensibly at least—take this right away from the employer. The practical problem however is: Suppose an employer some time prior to the formation of the union has made up his mind to "clean house". How is he going to exercise this right? In what way can he protect himself in exercising his unquestioned right to discharge? If in point of fact he cannot discharge union men without the burden of proof being put upon him to show that they were *not discharged* because of their union activities, does not the Act, as construed and applied to his particular case, operate to destroy his right to discharge and thus deprive him of a substantial right in violation of the Fifth Amendment.

This is precisely the situation in the present case.

Dr. Leiserson, Chairman of the Railway Mediation Board and the Board's expert witness in the present case, had a simple solution of this problem, which was that the employer was not supposed to know anything about the formation of the union. (R. 390, 396) As showing the Board's attitude, this witness' construction of the Act is entitled to considerable weight by reason of his position, the fact that he was the Board's expert witness and his long contact with legislation of this character. In answer to direct questions he indicated that when an employer discharged men about the time of the formation of a labor union the burden of proof was on the employer to show that he had not discharged the employees because of their union activities. (R. 390, 391, 393.) Dr. Leiserson testified that in discharging any prominent union man "obviously the purpose is to scare everybody so that there will be no organization". (R. 391.) He admitted that about

the only way the employer could protect himself would be by keeping efficiency records which would disclose his "right" to discharge the man in question at that particular time.[1]

Mr. Leon Arnold and Mr. England, President and Secretary of the Company, testified, as to the discharges on March 4, that the Company had been considering "cleaning house" for a long time prior thereto. The evidence is uncontradicted that for a long period of time prior to the discharges the officers of the Company had noticed a growing inefficiency in the work of the employees dating back to September of 1935. (Arnold, R. 46, 47, 56, 57.) Arnold, the President, had heard complaints from passengers in regard to the lack of cleanliness of the buses and delays in operation. He had talked it over with England, the Secretary, and Wilsey, the foreman of the shop. Wilsey did not know the reason for it. (R. 46, 48, 56, 58.)

Toward the end of November, Mason, a private investigator who had been employed by the Company over a period of years to make periodic investigations of the men, made a secret investigation, riding on the busses. No special instructions were given him as to this investigation or as to any of the previous investigations. (R. 219.) He reported disloyal conduct on the part of Hall a bus driver; also Hall's wife complained that Hall was running around with another woman, riding her on the bus beside him. (R. 292.) Also that drivers West and Magaha had failed to collect the proper fares on occasion. England, the Secretary of the Company, considered West and Magaha either dishonest or careless. (R. 329.) He would have fired West and Mahaga and other drivers in December if the weather had permitted them to break in new men. (R. 340, 345.)

There were complaints against Crissman, a bus driver, to the effect that he was unreasonable and rude to passen-

[1] Yet when Petitioner attempted to put in evidence the efficiency records of the discharged employees the Examiner ruled them out. See p. 9, Assign. 7, pp. 11, 20, 29 this Brief.

gers. So much was this so that a passenger himself went to the Company about it. (R. 399, 406.)

Smith, a bus driver, had had a number of accidents. England claimed that he had a right to take the number of accidents into consideration in firing a man irrespective of whether the man was to blame for them. (R. 333.) Magaha had been involved in twelve accidents in 1935 and one in 1936. (R. 327, 331.)

Mr. Arnold and Mr. England complained to the shop foreman, Wilsey, about the increase in break-downs on the road and about the busses being dirty. (R. 409, 410.) In December they made up their mind to do something about it and started to break in new men to take the places of those they intended later to discharge. (R. 77, 98, 121.) They continued to break in new men during January and February and had six or seven new drivers ready in January. (R. 340, 341.) On account of the increase in accidents and road calls England installed a system of keeping records of them about December the fifteenth. These records the Petitioner attempted to put in evidence but the Examiner refused to allow them on the ground that he did not understand them and did not know whether they had been kept properly or not. (See Spec. of Error 7, p. 11, this Brief.) It was pointed out to the Examiner that it made no difference whether the records were accurate or inaccurate; if as a result of these records the Company came to the conclusion that a state of inefficiency existed and later acted upon it this was admissible to overcome the seeming presumption that the men were discharged in March because of their union activities. (R. 307, 311.) The Examiner, however, continued in his refusal to allow their admission, which seriously injured the Petitioner. He did however permit England to testify of his independent knowledge, without resorting to the records, that the number of road calls increased from January the first to March the fourth, 1936. (R. 307, 312.)

Conditions as above described continued during January and February. In February certain patrons of the Company told Arnold that they had heard that busses would not be running subsequent to Saturday, February the twenty-ninth; that the men were going on strike; also that one driver had stated that he was going to get off the bus at the top of Picket's Hill and let it run wild. (R. 50, 60-63, 69.) About this time one of the drivers told him that a policeman had stopped him on M Street and said that there was a report that the brakes on the Arnold busses were in bad shape. This led to Mr. Storer, the brake Inspector for the Washington Traffic Bureau, making an inspection. (R. 63, 64.) Storer found circumstances which were at least suspicious and so reported. (R. 63, 64, 77-82.)

As already stated, Arnold had a number of conferences with England and Wilsey, the shop foreman, relative to the equipment and operation of the busses and the delays and road calls from time to time during the months from October on. (R. 60.) There was an exceptionally large number of road delays and break-down of busses in the latter part of February. Complaints as to cleanliness were more numerous in the four or five months prior to March. (R. 60, 61, 109, 112.) England offered in evidence records of the Company showing the increase in these break-downs and service calls, but the Examiner refused to admit them on the ground that the Examiner did not understand the various notations on the records and apparently the records were not good enough for the Examiner. (R. 114, 115, 117.)

Some time in February the management discovered that a man named Griffin, a professional labor organizer who had secured employment with the Company under the pretense that he was a workman, had been organizing the men into a union some time from September forward. (R. 47-49, 51.)

As a result of all of these things and the accumulated difficulties from September to February the management determined to "clean house". (R. 366, 367.) About this time

came the rumors that no busses would be running subsequent to February the twenty-ninth, and that one would be allowed to run away down hill. (R. 61.) Arnold called in Wilsey and England and asked Wilsey for a report on his men. The men that Wilsey and England recommended to be dismissed were dismissed, and the new men they had been breaking in put on the jobs in addition to various men obtained in answer to an advertisement placed in the newspaper. (R. 122.)

Both Arnold, the President of the Company, and England denied that the union activities of the men had had anything to do with their discharge and pointed out that the Company still had more union men in its employ than it had discharged. (R. 51, 62, 96, 100.) (Of the eighty employees, fifty-seven were members of the union, and of these only twenty were discharged. The President was not discharged.) The Examiner refused to allow the Petitioner to show that while some union men had been fired other union men were still in the employ of the Company, and that England believed at the time that those continued in the employ of the Company were union men. (R. 353, 355.) This prevented Petitioner from rebutting the "presumption" that because some of the union men were fired about the time of the formation of the union they were fired *because* of the union. It also prevented the Petitioner from showing the efficiency of the union men retained compared with the efficiency of the union men discharged.

D. The right to "clean house".

On the basis of the evidence cited under Part I-C we ask this Court how it can be said that the discharges of the 18 union men under the circumstances stated were so entirely without any other basis than the men's union activities that there must be an irresistible conclusion that they were discharged because they joined the union. The growing difficulties from September and October until February, the lack of efficiency, increase in road calls, signs of disaffec-

tion, rumors of sabotage, rumors of a strike, were all matters which the Company was entitled to take into consideration in leading up to its conclusion to "clean house". The fact that it determined in December to break in new men shows that the discharges were not because of the union for the testimony shows that the officials of the Company knew nothing about the formation of the union until some time in February. Further, the conclusive fact appears that all the union men were not discharged. Nor is there any testimony to the effect that the management singled out or even knew the ring-leaders of the union. As a matter of fact, the President of the union is still in Petitioner's employ. The Examiner prevented the Petitioner comparing the efficiency records of the union men still employed with the records of the union men fired, which in itself seems to Petitioner to be reversible error. But even without this is it so clear to this Court that there was no other reason for the discharge of these men than the formation of the union?

We say that if the evidence in this case is sufficient to raise the inescapable conclusion that the men were fired because of their union activities then the Act, as construed and applied herein, throws upon the employer the burden of proof that in exercising his constitutional right to discharge he must be prepared to prove conclusively that the men discharged were discharged for some reason other than their union activities. This overlooks the fact that an employer has a constitutional right to discharge employees for no reason at all. If the exercise of this right is, by the present Act, so restricted as to cut down the constitutional right so that an employer can discharge only for a *good* reason, it follows that the right has been curtailed in an important aspect, and the legislation is, therefore, unconstitutional.

Conceding for the sake of argument that an employer has no right to discharge employees for the purpose of destroying a labor union, though even this we believe is still open

to argument on the basis of *Railroad Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 369, and *Adair* v. *United States*, 208 U. S. 161, the exercise of this right as any other constitutional right should be prohibited only upon the clearest showing. In a border line case, and we do not concede that this is one, the tendency of the Courts should be to sustain the constitutional right rather than to extend restrictions upon it or upon its exercise. After a long period of difficulties with inefficient employees, the fact that at or about the time of the formation of a labor union the employees became so inefficient and the reports of their proposed conduct so serious to a transportation line that one third of the union employees were discharged, does not prove their dismissal was due to union activities. Joining a union carried on, in part, by a vice-president of that union in the private office of the President of the Transportation Company, may have been one factor in the case which led the men to believe that they, and not the directors were running the company. Whether the mental attitude created by the men joining the union was the cause of their conduct and statements need not be sought out by the executives of the corporation. Conditions were such, actual and reported, that a transportation company could not exist if they continued. Who is to say that Arnold was not justified, therefore, in taking drastic action when presented with a drastic state of conditions such as the stoppage of busses as well as possible destruction thereof. If the threats were carried out, as reported to Arnold, the damage would have been done, the losses tremendous and with a company heavily in debt, it might have proved disastrous. Arnold was not required to wait until the horse was stolen to lock the stable door.

We submit to this Court that if this Act is to be interpreted to destroy any rough and ready method the employer has for determining which employees he wants and which he does not want the Act is clearly unconstitutional by imposing a bureaucratic supervision of his constitu-

tional right to hire and discharge at will. These questions are of some interest in the present case as it cannot, by the farthest stretch of the imagination, be contended that there were not various reasons for the discharge of the individual employees herein in addition to the reasons leading up to the management's determination to "clean house".

We say the conduct of this case and of all cases of this character will inevitably lead the Board into roving inquisitions into the justice or injustice of the discharge of individual employees, into questions of policy of employers, into whether there were good reasons for the discharge of any particular employee, and thus the freedom of the employer will be destroyed and his business supervised by a Bureau in Washington. It is noted that the Board in its argument in the Court below makes the point that an order to restore the employee to duty with back pay does not establish a permanent condition. If it does not it is entirely futile. The ordinary relationship of employer and employee is substantially a personal service contract. Courts of equity have always disclaimed any power to issue mandatory injunctions compelling the specific enforcement of contracts of personal service.[1] This is substantially what an order to re-instate the employee amounts to. It seems folly too to believe that an order of re-instatement, virtually a command to keep a particular employee employed or go out of business, can ever be beneficial either to the employee or to the company. The employee will assume that the company is making up one of Dr. Leiserson's favorite efficiency records against him with the object of discharging him later on after the company has accumu-

[1]See Mr. Justice Holmes' Opinion in *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170. See also *Boyer* v. *Western Union Tel. Co.*, 124 F. 246; *Union Pacific R. Co.* v. *Ruef*, 120 F. 102; *Coburn* v. *Cedar Valley Land Co.*, 25 F. 791; *Miller* v. *Warner*, 42 App. Div. 208; *Davis* v. *Foreman*, 3 Ch. 654, (Eng.), 1894.

One of the reasons is the inequity which follows from the lack of mutuality. Thus a Court compelling an employer to re-instate the employee would have no way to compel the employee to continue to work for the employer and so a basic inequity would exist.

lated enough good reasons for his discharge to satisfy the Labor Relations Board in Washington. This one fact seems proof enough that the employer's right is being cut down and this too without any corresponding benefit to the employee.

E. The data as to the discharge of each individual employee.

The following information appears as to each individual employee and should be considered as the Petitioner's "defense" for discharging them when it determined to "clean house":

West: Employed two years and eight months as a bus driver; Financial Secretary of Union; discharged without any reason being given; no accidents, but Mason, called "spotter" by the Board, reported he failed to collect fares. The Board, in its Findings of Fact, seemed to indicate that this happened only once. The record, however, showed it happened three times (R. 293, 294). He was discharged partly because of the reports about him from Mason and partly because there were complaints about him (R. 326, 339). There was some trouble also about the Relief Fund and West had said that "there won't be any Relief Fund in a few days". (R. 356, 364.)

We submit that if the management had determined to "clean house", which is the uncontradicted testimony, there was ample reason for deeming West less desirable than one as to whom there was no complaint or any previous difficulty.

Hall: Employed two years and five months; Union man; the investigator Mason heard him complain to passengers in the bus he was driving about the company using a small bus; told the passengers to get together and see Arnold about it so they would not have to stand in the afternoon when the bus carried mail; said the company put small busses where large busses should be used and vice versa;

talked continually on route. This was in December, 1935, before any information about the Union came to the Petitioner (R. 292). On another occasion on the same day Hall continued to complain to the passengers and agitate them with regard to a larger bus; told the passengers that he, Hall, had told the supervisor that he was a dirty rat. Hall's wife reported to England, the Company's Secretary, that Hall was running around with a woman, riding her on the front seat of the bus and not collecting any fare from her. The woman was breaking up her home and Mrs. Hall asked him to discharge him which might break up the affair. England said that he would try to straighten it out without dismissing him but later did dismiss him on the basis of Mason's report and on what his wife had said. Prior to dismissing him he had spoken to Hall about the woman on several occasions but his warnings did no good. His wife called England several times about it. He did not dismiss him in January but dismissed him with the other men in March as in March he had the new men broken in (R. 336, 337).

In the Board's brief below Hall's irregularities are referred to as not of a serious nature, occurring several months prior to the discharge. In addition, the Board complained that the particulars of the "spotter's reports" were not specified. This confirms Petitioner's contentions that while ostensibly the Board is engaged in the task of ascertaining whether the employees were discharged *because of* the Union, in reality the Board has slipped into the inevitable error of most Government agencies in a position of authority and is exercising a general power to review the reasons for the particular discharge, thrusting the burden of justifying the discharge on the respondent. The Board's finding as to Hall shows that the Board is exercising a general power of supervision over the Petitioner's right to discharge. (R. 533-534)

We submit there was ample reason to discharge Hall as

between Hall and a person as to whom there was no difficulty.

Magaha: Bus operator for two years; no reason given him for discharge. Magaha's records showed accidents February [illegible], 1936, December 12, 1935, November 18, 1935, November [illegible], 1935, September 30, 1935, September 21, 1935, August 21, 1935, August 8, 1935, July 28, 1935, December 3, 1935, January 26, 1935, and January 28, 1935 (R. 329, 331). Some of these accidents Magaha *admitted he was to blame for.* Investigator Mason's report also showed that on December 8, 1935, he failed to collect proper fares (R. 327). England, secretary of the company, testified that he took the reports and the accidents into consideration when he discharged Magaha (R. 331). In addition, England claimed that he had a right to discharge a man for accidents even though the accidents were not the man's own fault; that the company did not keep drivers with them who had accidents (R. 333-334), the length of time they kept the men being dependent upon the kind of accident (R. 334).

The right of the Petitioner to discharge Magaha was criticized below by the Board on the ground that Petitioner's evidence lacks specification as to the complaints; that the irregularities were not of a serious nature and no particulars were specified. Magaha's accidents were referred to with the remark that "he had had several" in the two years preceding his discharge but none were serious.

We submit that thirteen accidents in two years, guilty or not guilty, like the three generations of idiots in Mr. Justice Holmes' opinion in one of the Sterilization Cases,[1] "is enough".

Crissman: Bus driver; employed six and a half years; Union member; no reason given him at time of discharge. A passenger, an employee of the Bureau of Internal Revenue named Joy, complained about Crissman's discourtesy and general lack of good sense (R. 325, 399, 401). On one occasion Crissman refused to take a transfer from him and

[1] *Buck* v. *Bell*, 274 U. S. 200.

was very loud and discourteous. On another occasion he was again discourteous to him about a transfer and made him feel like a fool (R. 405). On another occasion there was a rain, a lady got on the bus, put her fare in the box and the man with her was about to get in with a small dog on a leash. Crissman wouldn't let the dog in and made both the man and the woman get off the bus in the rain though there were vacant seats in the bus at the time. On another occasion he said Crissman made short, snappish and rough remarks to the passengers. These various incidents regarding Crissman were sufficient and numerous enough to arouse Joy to the point of complaining officially to the company (R. 404, 406). Crissman called up and said he was sick and could not work the morning after February 29th, due to his activities the night before (R. 350). This produced the following revealing comment from the examiner, Mr. Carmody:

> "Mr. Carmody: These bus drivers live in gold fish bowls, don't they, in most companies, and not much of their private life that isn't brought out by your checkers and investigators, and spotters is there?" (R. 350)

The Board in its brief below pooh-poohs the complaints against Crissman, comments on the complaints being eight months old, states they were of minor importance and complains that there was no specification of the particulars.

We submit that Petitioner had ample reason for discharging Crissman in comparison with a driver against whom there were no complaints. It must be remembered as to the above that Petitioner was prevented from comparing the data against the above drivers and against the other employees discharged, with the records of the various employees retained. The Examiner refused to allow this (R. 307, 311).

The remaining employees discharged were employees in the garage. To our way of thinking the Petitioner had con-

siderable reason for discharging each one of them. Petitioner is not compelled to prove beyond a reasonable doubt that it was properly exercising its constitutional right to discharge the men in question. Thus as to Beall, he had had no heavy duty experience, being a slow worker and hard to keep at work. In addition he had some outside difficulty in the way which prevented him staying on the work. He would leave the job in the afternoon after working in the morning and generally speaking was a hard man to keep on the job. On one occasion he had put in a clutch and they later had to take it out the same day, which cost the company money (R. 449).

As to Birch he was doing pretty well but he paid very little attention to anything likely to help him. Wilsey, the foreman, had to keep after him all the time and watch him very closely; he would destroy almost as much as he would make. He talked with him a number of times and tried to help but he did not seem to improve (R. 449).

It is true that neither Beall nor Birch had received a complaint concerning their work or been reprimanded but of course at this time there was no general order of the Board requiring employers to observe this practice. In its brief below the Board refers to the company's statements about Beall and Birch as being "vague and unsubstantiated allegations of inefficiency". This gives us an insight into the Board's viewpoint. Upon a charge such as the present the Board evidently will not take at its face value a company's observation, from the lips of its shop foreman that certain mechanics were not as good as they could be. Such reports must be "substantiated". Substantiated by what, we ask? We contend that even if the reports were wrong the company is absolved from blame in discharging the man if in fact it discharged him on the basis of the reports.

Garrison, Moore and Dove were bus washers. England, the Petitioner's assistant general manager, testified that passengers had complained of soiled clothes in the buses during the winter; that the company had to pay for clean-

ing clothes in a number of cases, about a dozen times in 1935; that the fault must have been that of the night bus washers and accordingly Moore and Garrison were discharged (R. 302-305). Dove was discharged for the same reason (R. 348). England had complained to Wilsey, the shop foreman, about the dirty busses and Arnold had been "riding him about it". Wilsey fired the men for this reason, because of their inefficiency in keeping the buses clean (R. 348, 448).

Smith: Garage worker. He gassed and oiled the busses. Wilsey blamed Smith for letting a bus run out of gas on a couple of occasions. After the morning run the busses would come in the garage and they would find the gas caps off and oil over the fenders and down the sides of the hood and oil filter caps missing. They had to buy these things by the dozen. Smith was to blame for it (R. 448).

As to McCauley, a garage employee, he originally had been a laborer engaged in putting chains on cars. The night foreman reported to Wilsey, the shop superintendent, that he was a very poor mechanic. Wilsey replied "Well, I'll get rid of him and see if I can pick you up a new man". This took place around the 11th of February. (R. 447)

As there is no testimony the management knew anything about the Union until the end of February it would seem that the Petitioner's defense of its right to discharge McCauley should be allowed.

Atwell: Garage employee. His work had only been satisfactory in spots. There were complaints about pilot bearings and clutch bearings burning out; the greasing was bad. He had broken up a grease gun and fittings were lying all around the place. This seemed to be a constant condition. Part of it could be attributed to Atwell, who was responsible for the greasing at night (R. 441, 442). Wilsey had a grease record of the man that showed the jobs that were bad. They kept him on a long while but finally fired him (R. 441-442).

Miller: A garage employee. The foreman reported to the superintendent a couple of times that he was not much

of a mechanic and that he, the foreman, wanted a better man (R. 451).

He was not a first rate mechanic. On a certain job he left parts around and acted as no mechanic ordinarily does (R. 507, 508). Record slips kept by the shop superintendent showed Miller's lack of ability (R. 508-511). He was supposed to mark down the time he worked on each bus on these slips, but did not do so (R. 511). They made up their mind in the middle of January to discharge him (R. 511). Miller, when he came to work would not pick his work up and the foreman would have to almost take his hands and lay them on the work (R. 512).

On one occasion a brake job turned out bad and he blamed this on Miller (R. 515, 517).

Theodore W. Frederick: Frederick was the acting day foreman. There had been a number of breakdowns as already shown and these had increased over a period of months and there was also some foreign substance showing up in the carburetors which prevented their working properly (R. 409-511). The men were continually in huddles neglecting their work. In part the shop superintendent Wilsey blamed this condition on Frederick, the day foreman, and this was one of the things that led up to his desire to "clean house" (R. 423, 424, 429, 430).

Philmore W. Frederick: He was a mechanic's helper in the garage employed on the day shift. The shop superintendent stated that the last two or three months he was "becoming kind of dominant and would react against any orders more or less" (R. 442). To be a good mechanic he should have had tools and would not buy them, not even a pair of pliers or a five cent tool. When he asked him about this Frederick replied "You don't pay enough money to buy tools" and "Why don't you pay enough wages" (R. 442, 443). He didn't think this was the proper way for Frederick to talk and made the same remark to Frederick's brother, the acting day foreman, saying as to Philmore Frederick "The boy is feeling his oats". He was insolent

on another occasion. There was bickering between them but he let it go. Frederick seemed to have reached his capacity as a mechanic the first year he was there. Wilsey took him off the job of washing cars and put him on the day crew though he refused the first time to work on the day crew which was a better job. He did not seem to want to become a more skilled laborer and reacted against Wilsey's effort to make him one. He showed no mechanical improvement thereafter. Seven weeks prior to his discharge they put him on a spring job in the shop but he got so tangled and tied up on the job that the superintendent was disgusted and said to him "Boy, you'll never be anything but just a grease ball" (R. 443).

McDonald: A mechanic in the garage. Engaged in body work; the shop superintendent kept a record of each man. On McDonald's record appeared the words "Stall, lazy and not neat" which referred to his workmanship. The inside of the bus should be kept neatly, the moldings and the weldings smooth. McDonald was a sort of an apprentice to Wilsey, the shop superintendent, who was compelled to explain things to him constantly. He had the habit of making a mess all about him which had to be cleaned up (R. 445, 446).

Harmon: Working foreman on the night shift. Harmon, like Theodore Frederick, was held by the management to be responsible for the unsatisfactory conditions in the shop and was discharged on this account. He had been discharged twice before (R. 413, 419).

We contend that on the basis of the information furnished the management by the shop superintendent, Mr. Wilsey, and coming to the management from other sources, coupled with general conditions which had gotten steadily worse since October, the Petitioner was amply justified in discharging the various employees mentioned. It may be that the record may show differences of opinion between the management and the various employees or between the management and the discharged day and night foremen as

to whether the employees discharged were efficient or inefficient. It is submitted, however, that the question before the Board was, not whether in actual fact the particular employees discharged were good workers or bad workers but whether the Petitioner, through its assistant general manager England or the shop superintendent Wilsey in fact discharged the employees because of their opinion that they were inefficient. It might be that some of the men discharged were efficient. Wilsey and England may have thought otherwise. Certainly the record of each individual as above shown at least supports the view that compared with other employees the particular persons discharged were undesirable looked at from their work in the past. If the management determined to "clean house" it was permissible for it to discharge its least efficient employees or even, if it saw fit, to take a chance on the new employees who answered the advertisement. Going back to the Petitioner's action in so discharging them and attempting to read into the discharge of 20 Union men an effort to destroy the Union when the Petitioner retained in its employ more Union men than it discharged, including the Union's President, is to throw the burden of proof upon Petitioner to prove a negative fact and this we submit amounts to a deprivation of Petitioner's constitutional right to discharge at will. It is significant that not one word appears in the record to the effect that in engaging the new men who answered the advertisement any question was asked them as to whether they were Union or non-Union men or intended to join the Union once they were employed. If there had been any desire to cripple the Union in firing the old men it is reasonable to suppose that there would have been a strong intimation to this effect in engaging the new. The evidence in this case, no matter what view this Court takes of the conflicting testimony with regard to Mr. Arnold's and Mr. England's statements about the Union, in the last analysis is limited to proof that the Petitioner discharged a certain number of Union employees, without singling out

the ringleaders, at about the time a Union was being formed. The Petitioner showed good reason for effecting a wholesale discharge at around this time. If upon the evidence in this case Petitioner is to be convicted of having attempted to destroy the Union by his action we come back to the question already asked in this br[illegible]: In what way can an employer who has determined to discharge some of his employees at about the time a Union is being formed, protect himself? This leads to the conclusion that the drastic penalty of reinstatement with back pay, which is practically a mandatory injunction and will result in the firing of all the new employees, should only be enforced against an employer upon the clearest possible evidence. We submit that no such evidence appears in this case.

F. The alleged efforts of the management to prevent the formation of the union.

Nothing illustrates the lack of evidence to show the management attempted to prevent the formation of the Union more than the character of surmises upon which the Board found the existence of active methods of oppression by the management. The most that the Board could say below is that the President of the Petitioner Company "queried" six of the bus drivers as to their membership in the Union and then related certain unpleasant experiences he had had with the labor Union. (R. 542) Certainly this was a mild example of the right of Free Speech and we believe was fully within the President's constitutional rights. If, as Dr. Leiserson suggests, the formation of a Union is such a tenuous and fragile process that the slightest word from the management will destroy it, we might as well commit ourselves to its ultimate destruction, as life itself does not conserve sensitive plants of this character. But we disagree with Dr. Leiserson and do not feel that there is anything so sacred about the formation of a labor Union that the constitutional guarantee of Free Speech is

repealed by the present statute.[1] We do admit, however, that as construed and applied herein the President of any company who says anything whatever during the formation of a labor Union is likely to be unable to overcome the presumption that he made such a statement to prevent the Union being formed.

Next, to eke out the proof reference was made below to the advertisement for help wanted. (R. 531, 532, 541) There was nothing mysterious or concealed about this advertisement, and we have no apologies to make for it except to say that, as counsel for Petitioner, if we had been consulted about it beforehand we would have advised the Petitioner that there was very serious danger that this advertisement, like the President's very temperate and decent remarks, might also add to the presumption that it was part of a general plan to destroy the Union.

Next, the Board in its Findings (R. 531, 532, 541) points to the circular, described as "a personal message from

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[1] It is interesting to note Dr. Leiserson's views of an employer's right with respect to a labor union. He stated on cross-examination:

> "When you say 'rights with respect to the labor union' he has no business with the labor union, and the labor union is a matter of the employees, and he has no more rights with the labor union than he has, for example, with an association of people who sell him things." (R. 390.)

He also stated in response to counsel's questions as to how tenderly the employer must tread as to recognizing the union:

> "First, let us begin with—here you have got an organization, say, of 59 people, and *of course if the employer were really following the law*, he would not know how many members they had, and which were members and which were not, until they told him. He would have no source of information. * * *
>
> "Q: Except accidentally? A: Except as they told him, *because he was supposed to keep his nose out of it.*" (R. 396.)

We submit that shows the atmosphere of bureaucratic bumptiousness in which the present case was heard. As against Dr. Leiserson there is the clear statement of the Chairman of the Committee at the Senate Hearings to the effect that "there is no law that can prevent you from discussing the matter amicably and peaceably with the workers, * * * nor is there in this Bill anything to prevent an employer discussing with his employees the merits *or demerits* of the various kinds of organizations". Also at the same Hearing Senator Walsh said that with reference to coercion or interference the Bill originally included the word "influence", but that it was stricken out "because we felt that an employer should not be prevented from exercising his influence for or against any particular organization that he thought detrimental to the welfare of his workingmen. Of course, they would be left free to reject his *advice and views* and were not to be interfered with if they did not choose to accept it." (Senate Hearing, Part 3, pp. 557, 558, Italics ours.)

Leon Arnold the President". Even if this message had been put out with the direct object of convincing the men that it was a bad thing to form the Union we say that the President had a perfect right under the Constitution to do this. Again we say that the Act herein does not repeal the right of Free Speech. The message was so far from coercion that only a mind fixated upon the notion that all employers are irretrievably bent upon grinding down their employees could find anything objectionable in it. We ask this Court in all seriousness to read this message, which appears in a footnote below,[1] and arrive at its own conclusion as to whether any Congress in its senses intended any such message to constitute a violation of the Act.

But aside from this the explanation of how the message came to be sent out March 2, 1936, is so simple that the effort of the Board to spell out some dark conspiracy in its appearance at that time indicates either the absurd fixation already referred to or the entire absence of any substantial evidence such that any mud at all is good mud to throw at the employer. The fact is, and we challenge this Court to examine the Record in this respect, the message resulted from a sort of "pep" service which the Company subscribed to a year in advance. The so-called "pep" talks were received in a batch. On a page in the beginning of the book containing on separate sheets the messages in question there are a series of numbers, not consecutive, but which indicate the particular messages to be sent out, de-

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[1] Footnote.—"A Personal Message From Leon Arnold, Washington, Va. & Md. Coach Co., Arnold Operated.

Sometimes groups of individuals in a business organize themselves into cliques.

Webster's definition of a clique is, 'a narrow circle of persons associated by common interests; a small and exclusive set, or coterie; generally used in a bad sense.'

The reason that the word clique is 'generally used in a bad sense' is that the small and exclusive set composing it usually thinks more of promoting the selfish interests of the clique than the collective interests of the organization.

The members are more concerned in serving their own ends than in serving the customers of the business who provide them with employment and pay their wages.

One sure way to acquire a poor standing, both in position and pay, in a business organization is to acquire a good standing in a clique." (R. 532)

pending upon the nature of the business. A slip is sent the Company suggesting which particular messages to send out in rotation. This particular message was sent out in accordance with the Company's instructions, exactly as it turned up in rotation. The Company did not pick out any particular number each week, and the whole supply was purchased at once. (R. 55.) The message of March the first was a routine message which happened to come along at that time. (R. 290, 291.) This is pilloried by the Board as a "coincidence" (R. 532, 541.)

Next is the appearance of Joseph Arnold, the President's son, at the organization meeting (R. 530, 531, 540), wearing a driver's cap. The Board's idea apparently is that he wore the driver's cap to conceal his identity though he worked every day in the week with the men as a fellow employee and was well known to them. Arnold's explanation was that he wore the driver's cap because he had mislaid his hat. (R. 374-384.) Anticipating the objection that the employees knew young Arnold, cap or no cap, (he did not wear a mask) the Board argued (R. 540) that Clark, the organizer and a representative of the National Organization, did not know young Arnold even though the men did. This reduces Arnold's attempted deception to the infantile basis of going to the meeting in a driver's cap knowing he could not escape recognition by all his other fellow employees, but in the hope that he could deceive Clark alone. (R. 182-184, 189, 190, 373, 384.) No such theory is possible. The incident however illustrates the inclination of the Board to take anything into consideration good, bad or indifferent as evidence against the Petitioner.

We now come to Harmon's testimony that Wilsey said that Arnold would put his busses on a lot and burn them before he would recognize the Union (R. 139, 140); that Arnold told Harmon while sitting in his car the night of the organization meeting that he would not recognize the Union; that Frederick had testified that Wilsey said he was not being discharged for joining the Union but because of the "under-handed way" he had gone about it (R. 190);

that England made a similar statement to him at the time of his discharge (R. 141); that Atwell and Miller testified that upon being discharged by England the latter said the Union was at the bottom of the matter (R. 270, 487); Bealle's testimony that when Wilsey discharged him Wilsey said the Union was the cause (R. 233); Frederick's testimony that Wilsey discharged him because he had a Union application blank. (R. 241.)

The Board's comment below on this phase is that England and Wilsey met this damaging testimony by unconvincing denials. "Unconvincing" is a mere epithet. England was a witness of the Board which presumably thought he would tell the truth when it called him to testify. He is accused of "testifying generally", that he did not tell any of the discharged employees that their discharge was founded on Union activities. (R. 301.) He added that when the discharged men asked questions "he did not answer them" (R. 301), presumably following Dr. Leiserson's probable advice. Wilsey's denial that the Union activities of the employees had anything to do with their discharge is referred to sarcastically, like the "personal message", as a "coincidence". (R. 414.)

This Court will realize that in the situation of these discharges, it is an easy thing for a number of workmen to outswear one employer. It is a significant feature of the testimony in the present case that not one single alleged statement as to discharge for Union activities was heard by more than one employee. It is reasonable to suppose that if there had been a serious effort to prevent the formation of this Union some substantial effort, some attempt along the line of a direct threat would have been made. There would be the usual testimony that the management was engaged in "boring from within". There is no such showing in the present case. The Board's own witnesses Arnold and England testified that they made no effort whatever to discourage the men and their denial ought to stand on a higher footing than the obviously interested statements of the men relative to their discharge for Union activities, which statements are unconvincing, if for no other reason,

than the fact that assuming them to be true they were made when it was all too late, and the Union was already formed. It is too much to argue that after a Union is formed the Petitioner would discharge twenty out of fifty-seven Union men on the theory that their discharge would be a lesson to the remainder. This argument might have some sense if it were coupled with further testimony that an effort was then made to get the remainder of the fifty-seven to resign or otherwise to destroy the Union. But there is no such testimony in the present case. The management's alleged efforts to destroy the Union ceased upon the discharge of the men; their efforts were meaningless or they were not efforts at all, or did not occur at all. We believe the latter.

As against this elaborate effort to spell out a conspiracy to destroy the Union already formed, an effort trenching on the one hand on the guarantee of Free Speech, on the other hand upon plain ordinary common sense, are the substantial reasons already developed in the present Brief for the determination to "clean house", and the reasons supporting the discharge of each particular employee. We say again that in an exceedingly complex matter of this sort wherein the order of the Board is so drastic as to amount to a question of economic life or death for the Company this Court ought to be convinced only by the clearest possible evidence. We ask this Court to consider the ease with which a change like that herein may be made, the ease with which a specious proof may be adduced, supported by the favorite argument of "coincidence", and the difficulty of the disproof by the Company of these easy charges. We ask this Court again to consider the matter in the light of the argument already made that for all practical purposes the Act, as construed and applied herein, has operated to thrust the burden of proving a negative fact, the absence of any effort to destroy the Union, upon the Petitioner. Such a viewpoint will reveal the "clear error" referred to by the present Chief Justice in *Texas and N. O. R. Co.* v. *Brotherhood*, 281 U. S. 548.

Part II.

Unconstitutionality.

A. The act herein is unconstitutional in its entirety.

As already stated, Petitioner at the outset of the proceedings before the Board appeared specially and filed an objection to the jurisdiction of the Board asserting the unconstitutionality of the Act on the same grounds as in the companion cases herein, namely:

1. On the ground that the Act was a delegation of legislative power to the Board in violation of Section 1, Article 1 of the Constitution;
2. That the Act was a delegation of judicial power in violation of Section 1 and Section 2, Paragraph 1, Article 3 of the Constitution on the ground that Section 7 of the Act as construed and applied herein was in contravention of the Fifth Amendment, the Board construing the said Section 7 to grant an absolute and unqualified right of self-organization to employes unrestrained by the necessity of the exercise of such right subject to the rights of Petitioner and the public;
3. On the ground that Section 8, Paragraphs 1 and 3 of the Act in themselves and as construed and applied deprived Petitioner of its liberty and property without Due Process in violation of the Fifth Amendment;
4. On the ground that Section 10 as construed and applied denied Petitioner the right of trial by jury and the right to have facts so tried examined in a Court of the United States according to the rules of the common law in violation of the Seventh Amendment, the said Section 10 likewise conferring on the Board judicial power in violation of Sections 1 and 2, Article 3 of the Constitution;
5. On the ground that the Board in construing and applying the Act exercised powers contrary to the reservations of the Tenth Amendment of the Constitution, (R. 26-28).

Petitioner's objection to the jurisdiction of the Board on the above Constitutional grounds being overruled, Peti-

tioner, without waiving its objection to the Board's jurisdiction, filed an Answer to the Board's Complaint, (R. 28).

The above Constitutional objections are likewise reiterated in the Specification of Errors in the present Brief. (P. 10.)

Inasmuch as the constitutionality of the present Act has been assailed from every possible angle in the case immediately preceding the present and the cases following it, counsel herein out of deference to the time of the Court will not repeat the arguments contained in the able Briefs in these companion cases, but respectfully ask leave to make them a part of the present Brief by reference.

As the recently unreported decision of the Circuit Court of Appeals for the Ninth Circuit in *National Labor Relations Board* v. *Mackay Radio and Telegraph Co.*, (January 11, 1937), may not be made part of the various Briefs herein we respectfully refer this Court to this decision and specifically rely upon its judgment holding the Act unconstitutional as in violation of the Fifth and Seventh Amendments. This case, like the present, admittedly involved interstate commerce.

As the present case seems to be the only admittedly interstate case counsel for Petitioner will devote the remainder of the present Brief to questions arising in the present case alone.

B. Petitioner has the necessary standing to argue inseparability:

Petitioner herein is aware of this Court's decisions in *New York ex rel Hatch* v. *Reardon*, 204 U. S. 152 and other cases[1] to the effect that a party cannot invoke the decision of this Court in respect to a provision of a Statute which is not invalid as applied to him. Petitioner, however, is not in this situation. Petitioner's argument under this

[1] Such as, *Supervisors of Albany County* v. *Stanley*, 105 U. S. 305; *Yazoo & Mississippi V. Railroad Co.* v. *Jackson Vinegar Co.*, 226 U. S. 217; *Austin* v. *Aldermen of Boston*, 7 Wall. 694; *Lee* v. *New Jersey*, 207 U. S. 67; *Dillingham* v. *McLaughlin*, 264 U. S. 370; *Darnell* v. *Indiana*, 226 U. S. 390; *Hicklin* v. *Coney*, 290 U. S. 169.

point is that the Statute shows on its face a comprehensive scheme to regulate intra-state as well as inter-state activities, with an object in view which could not be attained through the regulation of interstate relationships alone. Hence it appears affirmatively that Congress would never have passed the Statute to regulate the few remaining lines of inter-state activity if it could not constitutionally regulate labor relations in intra-state industry as well. In this aspect the question is one of statutory construction, *i.e.*, having already in the Railway Labor Act of 1934 regulated the railroads and allied transportation systems with respect to labor, can it be fairly argued that, the "comprehensive scheme" and the "object" of the Act being outlawed, Congress intended in the present Act to regulate the few remaining inter-state activities such as bus companies and communications systems. In this respect the present case seems somewhat similar to the *Trade-Mark Cases*, 100 U. S. 82.

Petitioner feels that when this Court has before it a number of cases involving the intra-state application of the Act, with the Records in support thereof, it is entirely proper for the present Petitioner to argue the lack of intention on the part of Congress to apply the Act to Petitioner if the Act is held unconstitutional as beyond the Commerce Clause in an intra-state case. If the present Petitioner cannot raise this point under the present circumstances it seems clear that the question never could be raised by one in Petitioner's position and so the Statute might be misconstrued or applied unconstitutionally, with no recourse.[1]

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[1] Also this Court has held that if the "heart" or bone and sinew of an Act is unconstitutional a litigant may avail himself of the fact even though the particular provisions are not invoked against him, (see the first Employers Liability Cases, 207 U. S. 463, and *Carter* v. *Carter Coal Co.*, 298 U. S. 238).

An additional reason is that the jurisdiction of the Court below and of this Court is dependent solely upon the constitutionality of the Act. (See Sec. 10-e of the Act) Not only the litigants in question but the Court itself must consider the Act in its constitutional aspect in order to arrive at a finding that jurisdiction exists.

C. The cases on inseparability do not prevent the judicial inquiry herein asked:

The Separability Clause in Section 15 of the present Act is not conclusive upon the Courts, but is merely an aid in determining the legislative intent and not a binding command:

Carter v. *Carter Coal Co.*, 298 U. S. 238;
Dorchy v. *Kansas*, 264 U. S. 286;
Railway Retirement Board v. *Alton R. Co.*, 295 U. S. 330, 362.

The effect of a separability clause is simply to reverse the presumption in favor of inseparability and create the opposite one of separability, *Carter* v. *Carter Coal Co.*, *supra.*

The result is that the presumption must be overcome by considerations which establish "the clear probability that the invalid part being eliminated the Legislature would not have been satisfied with what remains",

Carter v. *Carter Coal Co.*, *supra*, citing
Williams v. *Standard Oil Co.*, 278 U. S. 235, 241;
Utah Power and L. Co. v. *Pfost*, 286 U. S. 165, 184-185.

As this Court said in *Carter* v. *Carter Coal Company*:

> "Whether the provisions of a statute are so interwoven that one being held invalid the others must fall, presents a question of statutory construction and of legislative intent, to the determination of which the statutory provision becomes an aid. 'But it is an aid merely; not an inexorable command.' *Dorchy* v. *Kansas*, 264 U. S. 286, 290. The presumption in favor of separability does not authorize the court to give the statute 'an effect altogether different from that sought by the measure viewed as a whole.' *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 362.
>
> "The statutory aid to construction in no way alters the rule that in order to hold one part of a statute un-

> constitutional and uphold another part as separable, they must not be mutually dependent upon one another. Perhaps a fair approach to a solution of the problem is to suppose that while the bill was pending in Congress a motion to strike out the labor provisions had prevailed, and to inquire whether, in that event, the statutes should be so construed as to justify the conclusion that Congress, notwithstanding, probably would not have passed the price-fixing provisions of the code." (*Carter* v. *Carter Coal Co., supra.*)

Petitioner accepts the burden of showing the clear probability that, the comprehensive scheme aside, Congress would never have passed the present Statue to regulate in a bona fide manner bus companies and allied lines of activity alone, and that such an application would, in the words of this Court in *Retirement Board* v. *Alton R. Co., supra,* give the Statute "an effect altogether different from that sought by the measure viewed as a whole".

D. The way the court below passed upon the question of separability:

The Court below in its Opinion (R. 597) after stating that Petitioner had attacked the Act upon the ground of inseparability and referring to the *Carter Coal Case* stated:

> "There would be some basis for the application of this line of reasoning in the pending case if the Board's construction of the act were tenable, and it were reasonable to interpret the act as applying to intrastate as well as interstate activities. But as we have endeavored to show in an opinion filed this day in *Foster Bros. Mfg. Co.* v. *National Labor Relations Board,* the power conferred upon the Board to prevent unfair labor practices, as set out in Section 10 (a) of the act, is restricted to unfair labor practices affecting commerce, and commerce is defined to mean trade, traffic, commerce or transportation among the several states or with foreign countries, Congress therefore did not intend to regulate intrastate as well as interstate commerce, and there is no ground for the argument that

an important and inseparable part of the act having been condemned, the whole act must fall." (Record, page 597, 598).

The Opinion in *Foster Brothers Manufacturing Co.* v. *National Labor Relations Board* will be found reported in 85 F. (2d) 984. That case involved a bed manufacturing company in Baltimore, Maryland. The Board held as in the present case that the company's discharge and refusal to re-instate ten employees was an unfair labor practice. The Court held that the power of the Board to prevent unfair labor practices under Section 10 (a) was restricted to an unfair labor practice "affecting commerce". Under the *Schechter* and *Carter* cases it held that the activities of an intra-state manufacturing concern like the Baltimore company did not "affect commerce" and hence they were beyond the power of Congress to regulate. It stated that it might be immaterial whether the question to be decided was to be considered one of statutory regulation or of constitutionality, but since it could not be supposed that Congress intended to pass an unconstitutional law the Court preferred to rest its decision on the ground that Congress never intended the Act to apply to the circumstances of the *Foster Brothers* case.

As will be shown later under the present point it seems impossible to believe that Congress did not intend the Act to apply to the circumstances of the *Foster Brothers* case, and so the Court below was in error in resting its decision upon a question of statutory construction rather than unconstitutionality. We contend that if Petitioner argued below the question of inseparability, and if the Court below decided it against Petitioner on the basis of its decision in the *Foster Brothers* case, which decision avoided the constitutional question by invoking a doctrine of statutory construction, Petitioner's only remedy in the present case is to show that the Court below was in error on the question of statutory construction. In any case, aside from the

grounds of the decision below the validity of Petitioner's present argument on the question of inseparability will turn upon the ground upon which this Court rests its decision in the intra-state cases to be argued with the present case. No matter what the basis of the decision of the Court below, if this Court should hold in the intra-state cases herein that the Act is unconstitutional, then the present Petitioner would seem to have the right to make the present argument as to inseparability. We proceed then to this argument.

E. The act shows a comprehensive scheme to regulate employer-employee relationships in local industry as well as in inter-state commerce:

The Act shows on its face that it was intended to regulate local industry as well as companies engaged in inter-state commerce:

(a) The title of the Act is admissible to show the Congressional intent (*Hill* v. *Wallace*, 259 U. S. 44, 66-67). The Act is entitled "An Act to Diminish the Causes of Labor Disputes Burdening or Obstructing Inter-State and Foreign Commerce, To Create a National Relations Board and for Other Purposes." The Act is not limited to the prevention of disputes arising in inter-state commerce but covers any labor dispute in any industry which might "burden" or "obstruct" commerce, *however indirectly.*

(b) Section 8 prohibits employers from engaging in certain "unfair labor practices." The Act does not limit the prohibition to employers while engaged in inter-state commerce but covers all activities. This is further shown by the definition of employers in Section 2 (2) as "any person acting in the interest of an employer, directly or indirectly." The ensuing specific exceptions are a further indication of the all-inclusive meaning of employers.

(c) Employee is defined by Section 2 (3) to include all employees with the exception of agricultural laborers, domestic servants, etc. What would be the neces-

sity for the exclusion of domestic servants unless the Act was intended to apply to all others engaged in local or intra-state labor?

(d) Further proof of the above is found in Section 10 (a) empowering the Board "to prevent any person from engaging in any unfair labor practice (listed in Section 8) *affecting* commerce." (Italics ours).

(e) "Affecting commerce" is not limited to "occurring in inter-state or foreign commerce", which is defined in Section 2 (6). "Affecting commerce" is defined in Section 2 (7) to mean:

> "In commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

This means the Board can prevent "unfair labor practices" in any local industry if such practice *however indirectly* tends to lead to a labor dispute *however indirectly* burdening or obstructing commerce.

(f) Section 1 of the Act "Findings and Policy" may be resorted to to show the legislative intent. *Beard* v. *Rowan*, 9 Pet. 301; *United States* v. *Butler*, 297 U. S. 1. Note in the "Findings and Policy" that the denial of the right to organize and the refusal to accept the procedure of collective bargaining leads to strikes, that strikes obstruct commerce by "materially affecting, restraining or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce"; that strikes cause diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce. This Section does not restrict "employers" to employers engaged in inter-state commerce. It does not restrict "strikes" to strikes occurring in inter-state commerce, and in particular, it does not restrict the effect of strikes to burdening and obstructing inter-state commerce. On the contrary, strikes are apparently held to burden and obstruct anything and everything. They cause diminution of employment not in inter-state commerce but anywhere. The whole Section refers not to disputes in inter-state commerce, but to disputes in

local industries "affecting" the flow of goods and *indirectly* affecting the flow of goods into the channels of commerce.

The further finding that the inequality of bargaining power burdens and affects the flow of commerce and tends to aggravate business depressions by depressing wage rates, "the purchasing power of wage earners *in industry* and by preventing the stabilization of competitive wage rates and working conditions within and between *industries*" shows that Congress was not referring to the bargaining power of employees in inter-state commerce only. Applied to the present case what possible effect would the inequality of bargaining power among the employees of bus companies and communications systems, even including all the stock yards employees and those working on grain elevators, have upon economic conditions generally in this country? Excluding railroads what effect has the purchasing power of employees in the other lines of inter-state commerce upon a business depression? Further, Congress refers to wage rates "*in industry*," not inter-state commerce, as having an effect upon business depressions.

(g) The administrative interpretation of the Act is a guide to its construction (*Kern River Co.* v. *U. S.*, 257 U. S. 147, 153-4; *Mintz* v. *Baldwin*, 289 U. S. 346, 351). The administrative interpretation has been "nation-wide and fancy-free."[1]

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[1] The following table compiled from the First Annual Report of the National Labor Relations Board for the fiscal year ended June 30, 1936, shows how few clear inter-state cases the Board has taken under consideration contrasted with the large number of cases involving local manufacturing or production

Intra-State Cases (Local Manufacturing or Production)

Gate City Cotton Mills
Wayne Knitting Mills
Fruehauf Trailer Co. (2 cases)
Friedman-Harry Marks Clothing Co., Inc.
Rollway Bearing Co., Inc.
Brown Shoe Co.
Radiant Mills Co., Inc.
Wheeling Steel Co. (representation)
El Paso Electric Co. (2 cases)
Vegetable Oil Products Co., Inc.
Duplex Printing Press Co. (representation)
Duplex Printing Press Co. (complaint)
Atlas Bag & Burlap Co., Inc.
Saxon Mills
Mosinee Paper Mills Co.
Gibbs Underwear Co.
Englander Spring Bed Co.
Ohio Custom Garment Co.
Hardwick Stove Co.
Jones & Laughlin Steel Corporation
Typographic Service Co., Inc.
United Parlor Furniture Co.
Standard Lime & Stone Co.
S. L. Allen & Co., Inc.
Alabama Mills, Inc.
Wheeling Steel Corporation
F. C. Castelli Co., Inc.
Columbia Radiator Co.
International Nickel Co., Inc.
Alaska Juneau Gold Mining Co.
The Warfield Co.

Interstate Cases or Doubtful

Pennsylvania Greyhound Lines, Inc.—Greyhound Management Co.
Delaware-New Jersey Ferry Co.
United Fruit Co.
United Aircraft Mfg. Co.
Western Union Telegraph Co.
New England Transportation Co.
Mackay Radio and Telegraph Co.
Consumers Research, Inc.
Atlantic Refining Co.
International Mercantile Marine Co.
National New York Packing & Shipping Co.
Washington, Virginia & Maryland Coach Co.
The Associated Press

(h) As to the interpretation of practices "affecting" commerce, is it not a strange thing that in every single solitary published case decided by the Board it has held that the activities in question "affected" commerce entirely regardless of the business the Company was engaged in (See Commerce Clearing House, Labor Law Service, Paragraphs 15401, 15564).

(i) The magnitude of the organization created by Congress and the enormous funds that it has appropriated to maintain it is an indication that the Act was never intended to apply merely to inter-state commerce (omitting railroads).

We conclude therefore from the above that Congress intended the Act to apply to "intra-state" cases, as the word is used in the present Brief.

Intra-State Cases (Local Manufacturing or Production)

Clinton Cotton Mills
American Commercial Alcohol Co.—American Distilling Co.
United States Stamping Co.
National Casket Co., Inc.
Sands Manufacturing Co.
Baer Silk Throwing Co., Inc.
Fisher Flouring Mills
Fisher Flouring Mills
Beaver Lois Mills
Timken Silent Automatic Co.
Cleveland Chair Co.
Friedman-Harry Marks Clothing Co., Inc.
M. H. Birge & Sons Co.
Columbian Enameling & Stamping Co.
Algonquin Printing Co.
E. R. Haffelfinger Wall Paper Co.
Atlanta Wooden Mills
Greensboro Lumber Co.
Bendix Products Corporation
Harbor Boat Building Co.
Jeffery DeWitt Insulator Co., Inc.
Bell Oil & Gas Co.
Fashion Piece Dye Works Co., Inc.
American Hat Mfg. Co.
Canvas Glove Mfg. Co., Inc.
Anwelt Shoe Mfg. Co.
Ansin Shoe Mfg. Co.
Yale Underwear Co.
Dwight Manufacturing Co.
Oregon Worsted Co.
Santa Cruz Fruit Packing
Canton Stamping & Enameling Co.
Pittsburgh Steel Co.
Protective Motor Service Co., Inc.
The Rubber Co., Inc.
Chrysler Corporation
General Industries Co.
Pusey, Maynes & Breish Co.
Segal-Maigen Co.
Aluminum Company of America
Smith Cabinet Manufacturing Co.
Mesta Machine Co.
Mooresville Cotton Mills
Renown Stove Co.
Bradley Lumber Co. (2 cases)
Utterstrom Brothers, Inc.
C. G. Conn, Ltd.
St. Clair Rubber Co.
Crucible Steel Co. of America (complaint)
Cherry Cotton Mills
Crucible Steel Co. of America (representation)
Robert H. Foerderer, Inc.
S. Cohen & Sons
Wholesale Radio Service, Inc.
Gray-Knox Marble Co. (representation)
Chelsea Silk Co.
Cook Ceramic, Inc.
Kentucky Firebrick Co.
Aluminum Co. of America
Carlisle Lumber Co.
Indiana Textile Mills, Inc.
Robinson & Golluber
Atlas Drop Forge Co.
Louis Hornick Co.
Bemis Brothers Bag Co.
Signal Knitting Mills
Ilena Knitting Mills
Samson Tire & Rubber Corporation
Tucker Oil Co.
Demarest Silk Co.
The Optical Products Co.
Gardner-Denver Co.
Boss Manufacturing Co. (2 cases)
Riverside Knitting Mills
Aluminum Products Co.
Trenton Mills, Inc.
Wellwood-Norwich Silk Mills, Inc.
Club Troika, Inc.
Pacific Mills Co.
S. Gutman & Co., Inc.
American Potash & Chemical Co.
International Harvester Co.
Chicopee Manufacturing Corporation

Interstate Cases or Doubtf

The Associated Press (represe tation)
American Oil Co.
Agwilines, Inc.
Agwilines, Inc.
St. Joseph Stock Yards Co.
D & H Motor Freight Co.
Lykes Brothers—Ripley Stea ship Co.

F. Summary of the object of the act:

The doctrine of "piercing the veil" has already been applied by this Court in the *Schechter* and *Carter* cases. Anyone reading the present Act and considering the Board's application of it will see that its real object is not to regulate inter-state commerce but to set up for social and economic ends a nation-wide scheme for the assistance of labor and the settlement of disputes between Labor and

Intra-State Cases (Local Manufacturing or Production)	*Interstate Cases or Doubtful*
Bemis Bros. Bag Co.	Auth Electrical Specialty Co., Inc.
Lion Shoe Co.	J. Freezer & Sons, Inc.
Lehman Bros. Inc.	Toledo Shipbuilding Co., Inc. (2 cases)
S & K Knee Pants Co.	Quidnick Dye Works
Mann Edge Tool Co. (representation)	Magnolia Petroleum Co.
Mann Edge Tool Co. (complaint)	American Tobacco Co.
Edward E. Cox, Printer, Inc.	Whiterock Quarries, Inc.
Sunshine Hosiery Mill	Fall River Gas Works Co.
Sneath Glass Co.	Fit-Rite Slipper Co., Inc.
Foster Brothers Manufacturing Co., Inc.	Selfast Dress Co.
Axton-Fisher Tobacco Co.	Prudential Knitting Mills
John Blood & Sons Co.	Memphis Furniture Manufacturing Co. (2 cases)
Wallace Manufacturing Co.	Clark & Reid
Gordon Baking Co.	Atlas Mills
Brown and Williamson Tobacco Co.	J. W. Sanders Cotton Mills, Inc.
Ward Baking Co.	Stanley Works Co.
Pioneer Pearl Button Co.	Richards Wilcox Manufacturing Co.
Ralph A. Freundlich, Inc.	Chesapeake Manufacturing Co.
Sommerville Manufacturing Co. —Somerset Mfg. Co.	Clausner Hosiery Co.
Gray-Knox Marble Co.	Nolan Motor Co.
Belmont Stamping & Enameling Co. (complaint)	Schonfield & Reis
Belmont Stamping & Enameling Co.	Boyertown Burial Casket Co.
International Filter Co. (2 cases)	Fisher Body Corporation
	Chevrolet Motor Co.

Of the 180 cases covered by the above tabulation only 20 directly involved interstate commerce, any doubt being resolved in favor of classification as inter-state commerce. The balance, 160 cases, involve local manufacturing concerns. Of course, Petitioner does not contend that these latter companies may not manufacture or produce articles which may not in greater or less degree, or sooner or later, get into inter-state commerce or become part of the stream of commerce. It may be too that inasmuch as this tabulation is made by Petitioner's counsel without access to the official records, some of the cases classified as intra-state may in fact be inter-state cases in the strict sense of the word. The overwhelming majority of them, however, unquestionably are not inter-state cases in the sense that they are cases involving bus companies, steamship companies, pipe line companies, or communications systems. The intra-state companies above referred to are local businesses such as dye works, printers, tobacco companies, building material companies, milling companies, lumber companies, drug companies, leather companies, oil companies; manufacturers of shoes, hats, clothing, liquor, carpets, furniture, radiators, bags, automobiles, textiles, stoves, lamps, beds, paper, food, steel, caskets, glass, rubber, tools, printing presses, etc.

The administrative interpretation of the Act is therefore overwhelmingly in favor of Petitioner's contentions that it was intended to apply to local manufacturing and production. In truth only such an interpretation would give it the slightest chance of achieving the broad results its "Findings of Fact and Policy" shows it aims at.

Capital. The Act had its inception not in the needs of the non-railroad branches of inter-state commerce, (it seems folly to contend it), but in the chagrin of labor unions when this Court in the *Schechter* case held invalid Section 7 (a) of the NIRA Act. Why not admit that the ultimate object of the present Act is to fasten the doctrine of labor unionism, like a State Religion, upon every business in the country with more than two employees? (See Report, Senate Committee on Education and Labor, May 1, 1935). We go further and say that the further object of the Act is even more sinister, namely, compulsory collective bargaining. Section 8 (5) making it an unfair labor practice to refuse to bargain collectively with representatives of the employees is practically the same as compulsory arbitration. Either "bargaining" means offers back and forth leading to a contract or it means nothing. The essence of an offer is that the other party may accept it. If, therefore, a series of offers back and forth prove unacceptable they tend to become progressively lower or more acceptable. As the Act apparently requires the employer to keep on making or receiving offers it follows that the real object and achievement of the Act is a form of compulsory arbitration under the guise of compulsory collective bargaining. It has the added vice of requiring the parties to make a contract, for if collective bargaining is not to lead to a contract it amounts to mere conversation.

G. If the object of the act was to enact a comprehensive scheme to regulate intra-state activities as well as inter-state the act has not been misconstrued but is unconstitutional:

It seems almost incredible to Petitioner that in the face of the plain intention of the Act and its consistent administrative application the Court below came to the conclusion that it was not intended to apply to ordinary intra-state industry and manufacturing concerns. It is signifi-

cant that other Courts have held otherwise. Thus in *Board* v. *Jones and Laughlin Steel Co.*, 83 F. (2d) 98, a case exactly similar to the *Foster Brothers* case, the Circuit Court of Appeals for the Fifth Circuit impliedly held the Act unconstitutional, making no mention whatsoever of any possible misconstruction of the Act by the Board. To the same effect is the decision of the Circuit Court of Appeals for the Sixth Circuit in *Fruehauf Trailer Co.* v. *Board*, 85 F. (2d) 391. To the same effect is the decision of the Circuit Court of Appeals for the Second Circuit in *Board* v. *Friedman-Harry Marks Clothing* Co., 83 F. (2d) 731 and 84 F. (2d) 1000. The District Courts have likewise decided intra-state cases on the basis of unconstitutionality and not construction. Thus in *El Paso Electric Co.* v. *Elliott, et al* (U. S. D. C., Western Dist. Texas) the Court (Judge Boynton) held the Act unconstitutional *in toto*. To the same effect was the decision in *Stout* v. *Pratt*, 12 F. Supp. 864 (W. D. Mo., Otis, J.), wherein the Court stated that it was the "clear intent" of the Act to subject the relations between employers and employees even in small intra-state companies to the control of the Labor Relations Board.

The recent decision of the Circuit Court of Appeals for the Ninth Circuit in *National Labor Relations Board* v. *Mackay Radio and Telegraph Co.* (January 11, 1937), to the effect that the Act herein was intended to regulate inter-state commerce alone seems to beg the question as the Opinion does not consider whether mining or manufacturing "affects commerce" within the meaning of the Act. As construed by the Board intra-state manufacturing activities having any effect at all, however remote, upon inter-state commerce come within the scope of the Act. The constitutionality of any Act of Congress does not arise *in vacuo* but as the particular Act is construed and applied to the particular cases. If, therefore, the Board has consistently construed and applied the present Act to cases of intra-state manufacture on the theory that labor disputes

in such industries affect inter-state commerce, the administrative construction and application of the Act, coupled with the avowed ends and purposes of the Act revealed by the Act itself, constitutes a showing that the Act was really intended to apply to intra-state commerce in the sense that as construed and applied the Act holds most forms of intra-state commerce really inter-state commerce.

It would seem from the above that the Board has not really misconstrued the Act but has taken the plain mandate of Congress at its face value, which is to regulate all industry with reference to labor relationships. If so, the Act has not been misconstrued by the Board but is unconstitutional in respect to the regulation of intra-state industry.

H. The proof that the act is unconstitutional as to intra-state industry:

As to this, in order not to burden the Court and duplicate the arguments of other counsel in the companion cases herein, counsel for Petitioner respectfully request the Court to consider as Petitioner's argument the various arguments made in the companion cases herein relative to the unconstitutionality of the Statute as applied to intra-state industry. It seems more fitting to counsel that such arguments should be considered in connection with the concrete facts of the particular cases which have arisen. We feel confident that, bearing in mind the late Mr. Justice Holmes' admonitions in the *Northern Securities Case,* 193 U. S. 197, 402, and the remarks of the present Chief Justice in the *Schechter Case,* the Commerce Clause can never be extended to cover the regulation of intra-state industry no matter what "the distant repercussions" may be.

I. Under this court's decisions on separability the entire act is unconstitutional.

As already stated the question in the present case may be viewed from the standpoint either of statutory construction or inseparability. In other words, either the Act was not intended by Congress to apply to Petitioner if its all-inclusive application to intra-state commerce is destroyed, or the Act is unconstitutional in the sense that being unconstitutional as to intra-state commerce it is unconstitutional as to everything, there being no way to disentangle one aspect of the Act from the other. From the latter viewpoint it is submitted that under this Court's decisions on separability the Act is unconstitutional as a whole.

At the outset counsel for Petitioner find it difficult to perceive how this Court can ever adapt the machinery of the Act to a different object than the object revealed by the Act itself. If, therefore, the object of the Act is the regimentation of *all industry,* intra-state as well as inter-state, with respect to the relationships of employer-employee, the application of the Act by judicial excision to interstate industry alone constitutes the application of the Act to a different object than that intended by Congress. The Statute, by judicial construction, would be put to a use not intended by Congress when it was enacted. It is submitted therefore, initially, that the Courts do no service to Congress by holding constitutional a Statute piece-meal when the object of the Statute as a whole is different from the object of the Statute in its constitutional part.

Back of every Statute is a purpose. If the purpose of the present Statute is to regulate industry as a whole, with respect to labor relations, is this purpose effected by ekeing out through judicial construction a regulation of only a hundredth part of industry? In this connection, it must not be forgotten that the object of the Act is not, at least ostensibly, to encourage labor unions for the purpose of

preventing strikes, but the prevention of strikes because of their effect upon the general economics of the country.

It is difficult to perceive how the prevention of strikes in bus companies, even in the additional industries regulated under the Packers and Stockyards Act and the Grain Futures Act, would prevent the evils so roundly denounced in the "Findings and Policy". In this aspect this Court's decision in the *Trade-Mark Cases*, 100 U. S. 82, seems very close to the present state of facts. In these cases there was before the Court a Statute covering the registration generally of trade-marks without being restricted to trade-marks used in inter-state commerce. An indictment for a violation of the Statute was before the Court. The Court considered the Power of Congress to enact the Statute, tracing it solely to the Commerce Clause. The Court said:

> "When, therefore, Congress undertakes to enact a law, which can only be valid as a regulation of commerce, it is reasonable to expect to find on the face of the statute, or from its essential nature, that it is a regulation of commerce with foreign nations, among the several States, or with the Indian Tribes. If it is not so limited, it is in excess of the power of Congress. *If its main purpose be to establish a regulation applicable to all trade, to commerce at all points, especially if it is apparent that it is designed to govern the commerce wholly between citizens of the same State, it is obviously the exercise of a power not confided to Congress.*" (*United States* v. *Steffens*, 100 U. S., at page 97. Italic ours).

The Court then held that the Act made no distinction between trade-marks used in inter-state commerce and trade-marks involving intra-state commerce alone. The Court said:

> "It is, therefore, manifest that no such distinction is found in the Act, but that its broad purpose was to establish *a universal system* of trade-mark registration, for the benefit of all who had already used a trade-mark, or who wished to adopt one in the future, without

regard to the character of the trade to which it was to be applied, or the locality of the owner." (*United States* v. *Steffens*, 100 U. S. at page 98. Italics ours).

The Court then considered the argument of separability, namely, that even though the Statute was unconstitutional as to intra-state trade-marks it could be held constitutional as to trade-marks used in inter-state commerce. As to this the Court said:

"While it may be true that when one part of a statute is valid and constitutional and another part is unconstitutional and void, the court may enforce the valid part where they are distinctly separable so that each can stand alone, it is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear in order that crimes may be punished which are not described in language that brings them within the constitutional power of that body." (*United States* v. *Steffens*, 100 U. S. 99).

It is submitted that the quotations above seem applicable almost word for word to the present Act. The object of the Trade-Mark Act was, as the Court said, "to establish a universal system of trade-mark registration". Similarly, the object of the present Act is to establish a universal system regulating labor relationships throughout the whole country. Just as in the Trade-Mark cases this Court held it could not salvage a part of the Act when the universal application of the Act would be unconstitutional so we submit in the present case it cannot sustain the Act as to the few remaining branches of inter-state commerce.

Nor is the force of the Trade-Mark decision destroyed by the fact that the Court was dealing with a criminal offense, and that, in its own words:

"It is not within the judicial province to give to the words used by Congress a narrower meaning than they are manifestly intended to bear in order that crimes may be punished which are not described in language

> that brings them within the constitutional power of that body."

There is no difference in principle between the creation of civil liabilities in the present Statute (in the form of unfair labor practices) and the criminal offenses set forth in the Trade-Mark Statute. If, therefore, in the Trade-Mark Act this Court could not read into the "universal system" a limitation in favor of inter-state commerce it follows that it cannot read into the "universal system" in the present Act a limitation in favor of inter-state commerce. The real reason, it seems to us, is that this Court cannot reframe the *object* of the Act. In this respect the present Act is far clearer than the Trade-Mark Act. In the Trade-Mark case this Court was compelled to glean the "universal system" from the Act itself which was an old-fashioned piece of legislation without any findings of fact and policy. But in the "Findings and Policy" of the present Act there is the clearest possible indication of the universal system the Act was intended to put into effect.

Similar to the Trade-Mark Cases and cited by this Court in its decision is *United States* v. *Reese*, 92 U. S. 214, wherein this Court considered a Statute punishing election officers for refusing to any person the right to cast his vote at an election. This Court held that Congress could only punish such an offense when the refusal was on account of race, color or previous condition of servitude. It was urged that the more general description of the offense embraced the particular aspect "on account of race, color, etc.", and that the Section was valid when *in fact* the denial was on account of "race, color, etc.". But this Court held otherwise, stating:

> "We are not able to reject a part which is unconstitutional and retain the remainder, because it is not possible to separate that which is constitutional, if there be any such, from that which is not. The proposed effect is not to be attained by striking out

> or disregarding words that are in the section, but by inserting words that are not there now. Each of the sections must stand as a whole or fall altogether. The language is plain. There is no room for construction, unless it be as to the effect of the Constitution. The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. • • • To limit this statute as now asked for would be to make a new law, not to enforce an old one. This is no part of our duty." (*United States* v. *Steffens*, 100 U. S. at page 99).

As this Court said in the Trade-Mark cases:

> "If we should, in the case before us, undertake to make by judicial construction a law which Congress did not make, it is quite probable we should do what, if the matter were now before that body, it would be unwilling to do, namely: make a trade-mark law which is only partial in its operation, and which would complicate the rights which parties would hold, in some instances under the Act of Congress, and in others under state law. Cooley, Const. Lim., 178, 179; *Com.* v. *Hitchings*, 5 Gray, 482." (*United States* v. *Steffens*, 100 U. S. at page 99).

The above seems expressly applicable to the present case. It is no answer to quote the separability provision of Section 15 of the present Act and to argue that Congress in this provision indicated its wish that if the Act was unconstitutional as to intra-state labor relations still it should be held applicable to labor relationships of employers and employees engaged in inter-state commerce. This overlooks, as already said, the *object* of the Act shown by the "Findings and Policy". But in addition, it makes the "Findings and Policy" repugnant to the Act itself. What possible reference can Section 1 (c) of the "Findings and Policy" to the effect that the denial of collective bargaining materially affects, restrains and controls the flow of raw materials or manufactured goods in the channels of

commerce, have to bus companies devoted entirely to passenger service? Or what can be the relationship of Section 1 (d) of the "Findings and Policy" as to the effect that the refusal to accept the procedure of collective bargaining causes diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing in inter-state commerce? We say nothing further on the statement in the "Findings and Policy" that inequality of bargaining power (in bus companies, for instance) tends to aggravate recurrent business depressions.

It seems clear from the above that if the separability argument is to be applied to the present case the Court must not only prune away the application of the Act to intra-state commerce but physically cut the "Findings and Policy" right out of the Act.

This Court's decision in *Hill* v. *Wallace*, 259 U. S. 44, 70, supports Petitioner's present argument. In that case this Court held unconstitutional Section 4 of the Future Trading Act imposing a tax upon a Board of Trade failing to comply with the regulations proscribed under Section 5 of the Act. The Court held this tax was not in truth a tax but that it was designed to coerce the Board into compliance with Section 5 containing the regulations. Although the Act contained a Separability Clause similar to the present Act this Court held that the regulations contained in Section 5 fell with the tax contained in Section 4, the one being "interwoven" with the other. In other words, this Court held that everything in the Act the object of which was to subject Boards to regulation by the Secretary of Agriculture was unconstitutional. We contend the same reasoning is applicable to the present Act; that everything in it designed to accomplish the broad purposes outlined in its "Findings and Policy" is likewise unconstitutional if the Act, because of its unconstitutional intra-state regulation is incapable of achieving the object of the Act.

This Court's decision in the *Employers Liability Cases*, 207 U. S. 463, 500-504, likewise supports Petitioner's present

argument. In that case the Court was asked to limit the application of the Act which applied broadly to injuries received in both intra-state and inter-state commerce to the latter alone. The Court held it could not do this, stating that it was "unable to say that the statute would have been enacted had its provisions been restricted to the limited relations of that character which it was within power of Congress to regulate," and citing in this connection the *Trade-mark Cases*, 100 U. S. 82. In the present case it appears clearly from the "Findings and Policy" of the Act that Congress would never have passed the Act to regulate the unregulated portions of inter-state commerce, such regulation being utterly incapable of achieving the object of the Act revealed by the Act itself in its "Findings and Policy".

The test applied by this Court in *Butts* v. *Merchants Transportation Co.*, 230 U. S. 126, 133-138, as to whether the Civil Rights Act, held unconstitutional as to the States, applied to the coastal waters within the exclusive jurisdiction of the United States was as follows:

> Where the greater part of a statute is unconstitutional as beyond the power of Congress, the question for the Court to determine as to the part which is constitutional is whether it was the intent of Congress to have that part stand by itself—if not the whole statute falls.

This Court when the case came before it had already decided the *Civil Rights Cases*, 109 U. S. 3 holding the Civil Rights Act unconstitutional as to the States. It was contended in the Butts case that although this was so the Act applied to the District of Columbia, the territories and the coastal waters. This Court held that Congress never intended such a limited application of the Act and reached this conclusion on the basis of the very argument Petitioner in the present case now puts forward, i.e., on the basis of the object of the Act as set forth in the Act itself. Just

as the object of the present Act is entirely incapable of being attained by restricting the application of the Act to inter-state commerce so in the Butts case the object of the Act was likewise entirely incapable of being attained by restricting it to territory under the exclusive jurisdiction of the United States. It is significant that in the Butts case this Court turned to the preamble of the Act as proving it, quoting it as follows:

> "Whereas, it is essential to just government we recognize the equality of all men before the law, and hold that it is the duty of government in its dealings with the people to mete out equal and exact justice to all, of whatever nativity, race, color, or persuasion, religious or political; and it being the appropriate object of legislation to enact great fundamental principles into law." (*Butts* v. *Merchants Transportation Co.*, 230 U. S. 131.)

The only difference between the Civil Rights Act as applied in the Butts case and the present Act in the present case is that in the Butts case there was a geographical restriction of the Act whereas in the present case the restriction relates to a portion of industry, i. e., intra-state commerce. This, however, does not constitute a difference in principle.

Baldwin v. *Franks*, 120 U. S. 678, 685, is likewise in favor of Petitioner emphasizing, as it does, the difference between construction and separation. While it concedes the unquestioned rule that statutes may in part be constitutional and in part unconstitutional, and the constitutional part may be enforced if severable from the unconstitutional part it indicates this is not to be achieved by separating the two parts by reading into the statute a construction in favor of the so-called constitutional part. This is precisely what the Government would have this Court do in the present case. The Act herein has, strictly speaking, no separable parts, i.e., one part relating to intra-state cases, and the other to inter-state. What the Government asks this Court

to do is, if the Act is unconstitutional as to intra-state cases, to construe it to apply to inter-state cases alone. Again going back to the object of the Act as expressed in the "Findings and Policy" we say such a construction is unwarranted, just as unwarranted as the limited construction contended for but refused by this Court in *United States* v. *Reese, supra,* the *Trade-Mark Cases, supra,* and *Butts* v. *Merchants Transportation Co., supra.*

In *James* v. *Bowman,* 190 U. S. 127, 140, this Court had before it the question of the constitutionality of a statute punishing the prevention by bribery of the exercise of the right of suffrage by a person to whom that right was guaranteed by the Fifteenth Amendment. It was contended that the defendants violated this statute. The Court held that from the wording of the statute it was only intended to apply to cases arising under the Fifteenth Amendment and not to elections generally. The Court said:

> "To change this statute, enacted to punish bribery of persons named in the Fifteenth Amendment at all elections, to a statute punishing bribery of any voter at certain elections *would be* in effect judicial legislation. *It would be* wresting the statute from the purpose with which it was enacted and making it serve another purpose." (*James* v. *Bowman,* 190 U. S., p. 140, Italics ours.)

This case is important as it shows that this Court has always, upon the question of separability, considered the *purpose* of the statute. Impliedly this case and others hold that there can be no judicial announcement of separability if the enforcement of the constitutional part of the statute would change the purpose of the statute. Evidently, therefore, this Court considered that it was powerless, under the guise of separability, to put part of a statute to a purpose different from the purpose given in the statute itself even though Congress apparently was willing to take anything it could get. In other words, this Court repudiated

the specious argument that half a loaf would be better than no bread at all when it turns out, as here, that half a loaf would not be bread but a stone of altogether different substance.

To the same effect is the decision of this Court in *Illinois Central R. Co.* v. *McKendree*, 203 U. S. 514, 529, holding that an order of Secretary of Agriculture applying to both inter-state and intra-state commerce could not be limited to the constitutional application to inter-state commerce. This Court said:

> "We do not say that the state line might not be adopted in a proper case, in the exercise of Federal authority, if limited in its effect to interstate commerce coming from below the line, but that is not the present order, and we must deal with it as we find it. Nor have we the power to so limit the Secretary's order as to make it apply only to interstate commerce, which it is urged is all that is here involved. For aught that appears upon the face of the order, the Secretary intended it to apply to all commerce, and whether he would have made such an order, if strictly limited to interstate commerce, we have no means of knowing. The order is in terms single and undivisible." (*Illinois Central R. Co.* v. *McKendree*, 203 U. S. p. 529.)

Williams v. *Standard Oil Company*, 278 U. S. 340, 341, 342, emphasizes the impossibility of changing the purpose of a statute. In that case the Court held invalid a portion of a statute fixing the sale price of gasoline and held that the remainder of the statute providing for the creation of a commission, the collection of data, etc., creating mere adjuncts to the main purpose of fixing prices was likewise invalid. This Court quoted with approval Mr. Justice Pitney's statement in *Riccio* v. *Hoboken*, 69 N. J. L. 649, 662 condemning judicial mutilation of a statute and holding that the preservation of valid parts of an Act was only possible where the removal of the unconstitutional features would "leave the constitutional features and *purposes* of the Act substantially unaffected by the process".

To the same effect is this Court's decision in *Railroad Retirement Board* v. *Alton Railway Co.*, 295 U. S. 330, 362, wherein this Court referred to the separability provision in the Act declaring that it merely reverses the usual presumption. This Court continued:

> "But notwithstanding the presumption in favor of divisibility which arises from the legislative declaration, we cannot rewrite a statute and give it an effect *altogether different from that sought by the measure viewed as a whole.*" (Italics ours)

After referring to the unconstitutional provisions this Court continued:

> "They so affect the dominant aim of the whole statute as to carry it down with them".

We submit this is precisely the situation in the present case: the unconstitutional intra-state provisions so destroy the dominant aim of the present statute as to leave not "the bone and sinew" of the Act but merely minor skeletal remains.

To the same effect as the above cases is *United States* v. *Harris*, 106 U. S. 629, 641.

This Court's decision in *Carter* v. *Carter Coal Co., supra,* on the question of separability supports the argument above made. In that case there was a far better argument for separability than in the case of the present Act because the Bituminous Coal Conservation Act shows a clear dichotomy between the labor provisions of the Act and the price fixing provisions. The Act was even physically divided into two parts, one of which, if the separability argument had any weight, would have seemed equally as constitutional as the other was unconstitutional. This Court however applying the test of legislative intent shown by the terms of the Act itself in its preamble and on the basis of the inter-dependence of the *means* provided by the Act for achieving the end contemplated held the provisions of the Act in-

separable, and hence held the Act unconstitutional. In the present case if the means are unconstitutional with respect to the Fifth Amendment insofar as so-called intra-state commerce is concerned they are likewise unconstitutional insofar as inter-state commerce is concerned. But, from the viewpoint of inseparability, it is not so much the means we are now concerned with: it is the end or object of the Act disclosed by the Act itself. If that object is the suppression of evils in so large a part of industry that such evils "substantially burden and affect the flow of commerce and tend to aggravate recurrent business depressions", (Sec. 1), and if the Act is unconstitutional as construed and applied to nine-tenths of industry, the question arises whether it can be held constitutional as applied to the other one-tenth, or whether the test referred to in the Carter case and other cases, i.e., whether Congress would have passed the Act to apply to bus companies and the few forms of inter-state commerce other than the railroads, does not apply. We submit that if in the Carter case this Court cannot reconstruct the means to achieve a given end it cannot, in the present case, sustain the diversion of the Act to achieve an end entirely different from the end contemplated by Congress in enacting it. In other words, we contend that if the Act as applied to the few bus companies, communications systems, etc., remaining over after the Act has been eliminated as a regulation of industry in toto would constitute a mere internal regulation of these companies without any general effect upon inter-state commerce and without achieveing in any way the object of the Act, such construction is unjustified, and the Act in its entirety must fall.

CONCLUSION.

It is submitted that the judgment below should be reversed:

(1) On the ground that the Record does not sustain the findings of the Board that Petitioner was guilty of an un-

fair labor practice within the meaning of Section 8 of the Act, in which case it becomes unnecessary for this Court to consider the constitutional question;

(2) In the event that the factual question should be determined adversely, it is submitted the Act is unconstitutional as in violation of the First, Fifth and Seventh and Tenth Amendments as applied to inter-state commerce;

(3) In the event that the Act is declared unconstitutional as to local industry or manufacturing concerns the Act is unconstitutional as applied to inter-state commerce, the latter application being inseparable from the former according to the object of the Act as shown by the Act itself.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 469

WASHINGTON, VIRGINIA & MARYLAND COACH COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The Solicitor General, on behalf of respondent, National Labor Relations Board, joins in the petition upon the ground that the constitutionality of the National Labor Relations Act as applied to the petitioner is an important question of Federal law, which has not been but should be settled by this Court. A decision on the issues raised in the instant case will determine the validity of the Act as applied to employers admittedly engaged in interstate transportation and settle certain important questions frequently raised under Article III and

the Fifth and Seventh Amendments to the Constitution.

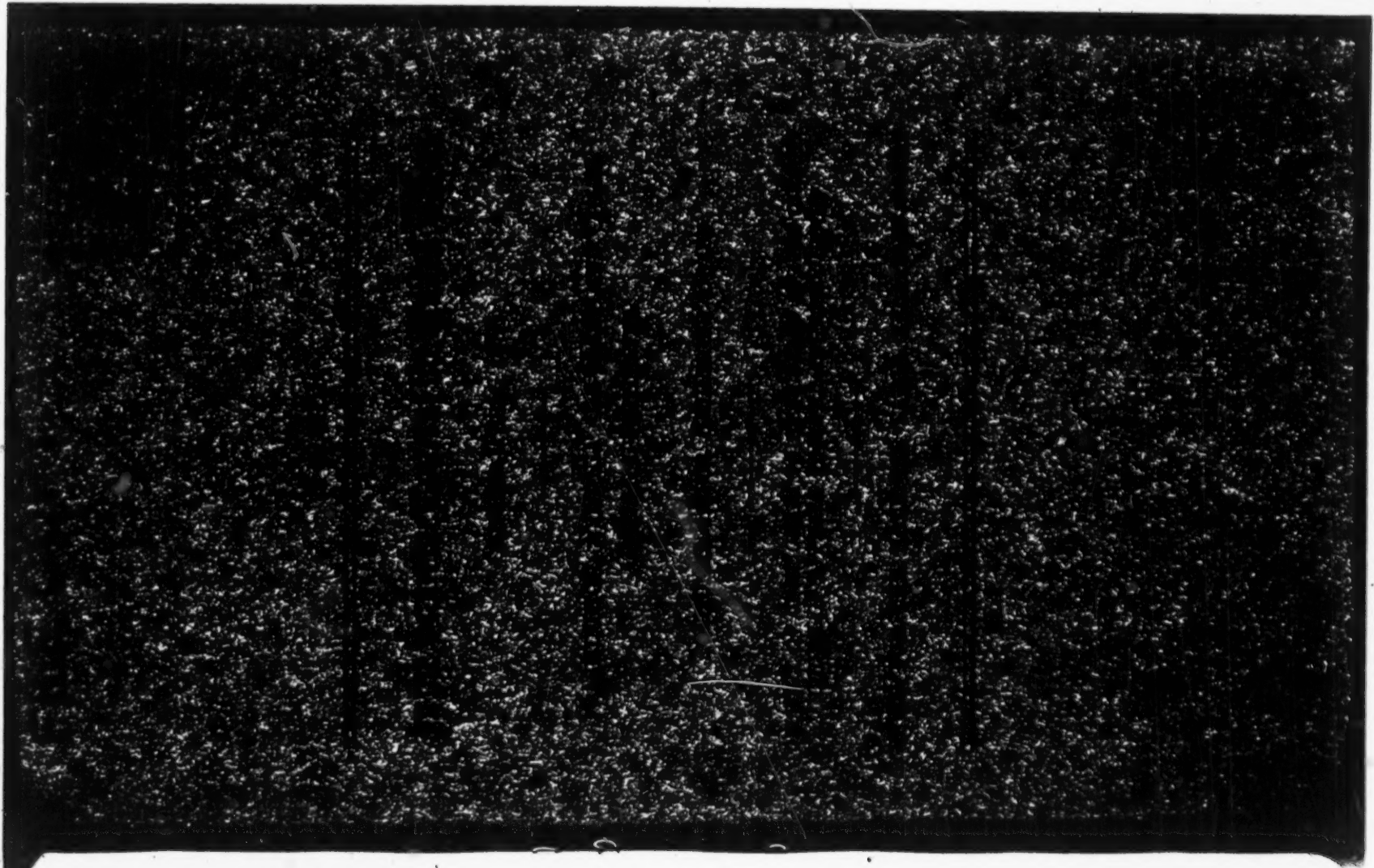
The Court is respectfully referred to pages 2 to 10 of the Government's memorandum joining in the petition for certiorari in *Associated Press* v. *National Labor Relations Board,* No. 365, present term, for a statement of the Government's position on the principal contentions advanced in the petition herein.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

U. S. GOVERNMENT PRINTING OFFICE: 1938



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In the Supreme Court of the United States

OCTOBER TERM, 1936

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WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit (R. 589) is reported in 85 F. (2d) 990. The findings of fact and order of the National Labor Relations Board (R. 525–549) are reported in 1 N. L. R. B. 769 (1936).

JURISDICTION

The decree of the United States Circuit Court of Appeals for the Fourth Circuit was entered October 8, 1936 (R. 598). The petition for writ

of certiorari was filed October 17, 1936, and was granted October 26, 1936. Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTION PRESENTED

1. Whether the National Labor Relations Act, as here applied to this petitioner, is a valid exercise by Congress of its power to regulate commerce with foreign nations and among the several States.

2. Whether the provisions of Section 8, subdivisions (1) and (3) of the National Labor Relations Act, as applied to this petitioner, are consistent with the Fifth Amendment.

3. Whether the provisions of the National Labor Relations Act, as here applied, deprive petitioner of the right of trial by jury guaranteed in the Seventh Amendment.

4. Whether petitioner is entitled to question the validity of provisions of the Act other than those here invoked against it, or the application of the Act to persons other than petitioner, and, if so, whether the validity of such provisions or applications is material, because of their separability.

STATUTE INVOLVED

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. I, Title 29, Sec. 151 *et seq.*) is printed as an Appendix to the brief in No. 365, *The Associated Press* v. *Na-*

tional Labor Relations Board, and is also summarized at pp. 3–8 of that brief.

STATEMENT

On March 5, 1936, Local No. 1079, Amalgamated Association of Street, Electric Railway & Motor Coach Employees of America, a labor organization, filed a written charge against the Washington, Virginia and Maryland Coach Co., petitioner herein, pursuant to Section 10 (b) of the National Labor Relations Act and to Article II, Section 2, of the Rules and Regulations of the Board (R. 8–13). A supplemental charge was filed on March 10, 1936 (R. 14–18). On March 11, 1936, the National Labor Relations Board, through its Regional Director for the Fifth Region, issued a complaint embodying the charges, pursuant to Section 10 (b) of the Act and Article II, Section 5 of the Regulations (R. 19–24). The complaint alleged that petitioner was engaged in the operation of motor buses for the transportation of passengers and express for hire between points within the District of Columbia and the States of Virginia and Maryland; that petitioner had discharged and refused to reinstate certain drivers and garage employees because of their membership and activity in the above mentioned Local No. 1079; and that petitioner thereby had engaged in, and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act (R. 23).

On March 23, 1936, petitioner, appearing specially, filed a motion to dismiss the complaint on the ground that the National Labor Relations Board had no jurisdiction over it, and also on the ground that the Act as applied to petitioner by the Board contravened Article I, Section 1, and Article III, Sections 1 and 2 of the Constitution and the Fifth, Seventh, and Tenth Amendments (R. 26–28). Petitioner also filed an answer not waiving its objections to jurisdiction, admitting substantially the allegations relating to the nature of its business, admitting that it had discharged and refused to reinstate certain employees as alleged in the complaint, but alleging that it had done so because of inefficiency and not because of their membership or activity in the union (R. 28–37).

Hearings on the complaint were held on March 23, 24, 25 and 26, 1936, before John M. Carmody, a member of the Board acting as trial examiner, and on May 2, 1936, before J. Warren Madden, Chairman of the Board acting as trial examiner. During the course of the hearing petitioner's objection to the jurisdiction of the Board was overruled (R. 43), and its motion to dismiss the complaint on the ground that the evidence did not support the allegations was denied (R. 373). Upon motion of counsel for the Board, the complaint was dismissed at the hearing as to 3 of the 21 employees alleged to have been discriminated against (R. 485, 493). Petitioner appeared and participated in

the hearing, and was given full opportunity to introduce evidence and cross-examine the witnesses called by the Board.

On May 21, 1936, the Board handed down its decision setting forth its findings of fact (R. 528–547), and entered the order which is here being reviewed (R. 548–549). These findings may be summarized as follows:

1. *Nature of petitioner's business.*—The Washington, Virginia and Maryland Coach Company, petitioner herein, is a Virginia corporation, organized in 1926, with its main office and garage at Clarendon, Virginia. It operates motor buses on regular schedule between points within the District of Columbia and points within the State of Virginia, in the transportation for hire of passengers, United States mail, newspapers, and occasional express shipments. It no longer operates buses on regular schedules from the District of Columbia to the State of Maryland but occasionally operates buses between such points (R. 528).

Petitioner has received a certificate of convenience and necessity from the Federal Bureau of Motor Carriers in accordance with the Motor Carrier Act of 1935, and also possesses an interstate permit granted by the District of Columbia and an intrastate permit granted by Virginia. Accordingly, petitioner must transport all persons and property picked up in the District to points in Virginia, but it may engage in local transportation in Virginia. In practice, more than 50 per cent

of the passengers picked up in Virginia are transported to points within the District. (R 528, 529.) Petitioner's business has grown rapidly, and in 1935 it transported 2,436,236 passengers (R. 529).

In the course of its business petitioner now operates 48 buses and has approximately 80 employees, of whom 50 are drivers, 27 are garage employees, and 3 are office employees. The bus operators are actively engaged in operation of instrumentalities of interstate transportation. The operations of the garage situated at Clarendon, Virginia, are also an integral part of petitioner's interstate transportation system; there the buses are serviced and made ready for their scheduled runs. Such servicing is essential to the safe and regular functioning of the bus system. In other words, "the garage employees are actively working upon instrumentalities of interstate transportation and are engaged in operations in the course and conduct of interstate transportation." (R. 529, 545.)

2. *The Unfair Labor Practices.*—Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, Local No. 1079, a labor organization, was chartered on March 3, 1936 (R. 530). Thereafter the petitioner, on March 4, 5 and 6, 1936, discharged 21 of its employees, all of whom were members of the Union. The Board reviewed the facts in detail (R. 530–544) and concluded that petitioner discharged 18

of these employees because of their union membership and activity, discriminated in regard to their hire and tenure of employment in order to discourage membership in the Union, and thereby interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act (R. 544–545). The evidence supporting the Board's findings on the merits is discussed in detail *infra*, pp. 24–42.

In conclusion, the Board found that the operations of petitioner occur in the course and current of transportation within the District of Columbia and between the District of Columbia and the States of Virginia and Maryland. It also found that the unfair labor practices engaged in by petitioner burdened and obstructed that commerce, and had led and tend to lead to labor disputes which impair the efficiency, safety and operation of instrumentalities of commerce (R. 546).

On the basis of these findings, the Board concluded that petitioner was engaged in unfair labor practices affecting commerce within the meaning of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act (R. 547). It therefore issued an order (R. 548–549) requiring petitioner to cease and desist from discouraging membership in Local No. 1079, or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment, or from in any other manner interfering with, restraining

or coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act; and to offer their former positions to the 18 discharged employees, with all the rights they had previously enjoyed, and to pay them a sum equal to that which they would have earned during the period from their discharge to the offer of reemployment, less any sum they had earned during the period (R. 548–549). Petitioner's motion for rehearing and reconsideration (R. 553–555) was denied by the Board (R. 556).

On June 9, 1936, the Board filed in the court below a petition for the enforcement of its order, pursuant to Section 10 (e) of the Act (R. 1–5). On October 8, 1936, the court entered its decree that the order of the Board be enforced, and that petitioner abide by and perform the directions therein contained (R. 598–599).

ARGUMENT

I

THE NATIONAL LABOR RELATIONS ACT, AS HERE APPLIED, IS CONSTITUTIONAL

In the brief filed on behalf of the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* we have shown that subsections (1) and (3) of Section 8 of the Act, as applied to interstate enterprises, are a valid exercise of the commerce power, and that these provisions of the Act are consistent with the Fifth and Seventh Amendments to the Constitution. We have also shown in that brief that the validity of other provisions of

the Act, and the application of the Act to other classes of persons need not be determined in considering the provisions and application here involved.

The application of the Act in the instant case need not be discussed at length. Petitioner is admittedly a common carrier in interstate commerce by motor bus, and the employees involved are engaged in work in the course and conduct of such interstate transportation. *Supra,* pp. 5–6. The argument already made in No. 365 with respect to the application of the Act to The Associated Press applies *a fortiori* here. If Congress may, in order to facilitate the amicable settlement of disputes, seek to make the appropriate collective action of employees on interstate railroads an instrument of peace rather than of strife, it may likewise do so with respect to the employees of an interstate bus system devoted to the transportation of passengers, mail, and express shipments. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570.

Petitioner contends, however, that if the Act is invalid as applied to an enterprise engaged partly in manufacturing and partly in interstate commerce, the whole Act must fall, and, further, that if the Act be unconstitutional as applied to such enterprises, it may not be applied to petitioner. In support of this position petitioner contends that the administrative interpretation of the Act has been "nation-wide and fancy free"; cites as au-

thority a table compiled from the First Annual Report of the Board purporting to show the small number of "interstate cases the Board has taken under consideration contrasted with the large number of cases involving local manufacturing or production" (Br. p. 49); and concludes from this that "the administrative interpretation of the Act is therefore overwhelmingly in favor of petitioner's contentions that it was intended to apply to local manufacturing and production" (Br. p. 51, note). Second, petitioner contends that the Act is void in toto because Congress would not have passed the statute if its application was to be limited to such "interstate cases" (*Id.* p. 66).

We have shown in detail in the brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* at pp. 111–118, that Congress intended by this Act to remain within the limits of the constitutional power of Congress under the commerce clause, and that Section 2 (7) contains a jurisdictional limitation in language appropriate to that end. This jurisdictional requirement must always be met, and the Board's findings with respect thereto are subject to full review in the circuit courts of appeals and ultimately in this Court. Accordingly, should the Board err in its application of the Act, the courts will correct the error by holding that the order exceeded the Act, not that the Act exceeded the commerce power. This interpretation has been adopted by every circuit court of appeals which

has passed upon the validity of orders under the Act. See brief for the Board in No. 365, pp. 112–113. The opinion of Circuit Judge Wilbur in *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, Jan. 11, 1937 (C. C. A. 9th), upon which petitioner relies in another connection (Br. p. 42), correctly stated on this question:

> In view of the definition of commerce contained in the Act, and the use of the familiar expressions relating thereto: "burdening", "obstructing", and "free flow of commerce", the Act by its terms is expressly confined to the regulation of interstate commerce. Any attempt to apply the Act to activities other than interstate commerce and to matters which only indirectly affect such commerce, is not authorized by the terms of the Act if properly construed. There is, therefore, no difficulty to be encountered by the courts in limiting the Act to matters within the commerce clause of the Constitution, for Congress has already done so. If the officials of the government in executing this statute have attempted to extend it to matters wholly intrastate in character they have done so in the teeth of the statute and the federal Constitution.

Moreover, it is clear that the Board has never construed the Act as applicable to all industry. See brief for the Board in No. 365, pp. 115–117.[1]

[1] The table of so-called "interstate" and "intrastate" cases compiled by petitioner (Br. pp. 49–51) is wholly without significance. Congressional power clearly extends to local activities directly affecting interstate commerce. See brief

Nor is petitioner convincing in its second argument that the purpose of Congress in passing the Act would be thwarted if the Act were to be limited to those enterprises wholly engaged in or about interstate commerce. Even as so limited, it would be completely workable and have an important application to a variety of industries the uninterrupted operation of which is at least as essential to the commercial life of the nation as those subject to the Railway Labor Act of 1926. See brief for the Board in No. 365, at p. 118.

The motor transportation industry may be taken as an illustration. Within recent years that industry has developed into a gigantic network of freight and passenger lines reaching into virtually every city and town in the United States.[2] So

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for the Board in No. 419, *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, at pp. 40–51. The types of employees involved, the nature of their work and its relation to the interstate commerce of the employer, and the present or potential effect of labor disputes in the enterprise must be determined upon individual records, and certainly cannot be ascertained from the name of the employer, as petitioner seeks to do. Moreover, about 60 percent of the cases listed have not yet been decided by the Board, and petitioner makes no attempt to distinguish cases arising in the Territories and the District of Columbia, where Congressional power is plenary.

[2] In 1935 there were 33,440 operating agencies in the bus industry, owning 117,850 buses operating over 1,324,774 miles of route. The value of this rolling stock was $469,087,000, and the value of terminals, garages, etc., was $185,500,000. *Bus Facts for 1936* (National Association of Motor Bus Operators, 1936), p. 5. In contrast, the total mileage of railroad routes in the United States in 1935 was 241,822.

phenomenal has been the growth of this new branch of the transportation field that it now seriously challenges the status of steam and electric carriers as the prime agencies of interstate transportation.[8] In the Motor Carrier Act of 1935,

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World Almanac (1937), p. 318. Accurate and complete statistics are not available to indicate the proportion of the bus industry operating in interstate commerce. Some indication may be had, however, from the available data respecting The Greyhound Lines, the largest of the interstate carriers in the industry. This is a nation-wide system of affiliated and connecting companies affording motor bus transportation to every State in the United States and to some cities in Canada. The entire system presents striking similarities to our national railroad systems. In 1934 the Greyhound Lines operated 125,170,245 bus miles, traversing 42,863 miles of route, with 1,614 buses. *Moody's Manual of Investments* (1935), p. 1808. The Pennsylvania Greyhound Lines, Inc., one of the units in this system, operates 5,000 miles of route between New York, St. Louis, Indianapolis and other points. A petition by the Board for the enforcement of a cease and desist order against this company under the Act is pending in the United States Circuit Court of Appeals for the Third Circuit (No. 6007, March Term, 1936). See *In the Matter of Pennsylvania Greyhound Lines, Inc.*, 1 N. L. R. B. 1 (1936).

Motor truck registrations in 1934 totaled 3,409,335. *Motor Truck Facts* (Automobile Manufacturers Association, Inc., New York, N. Y., 1935), p. 3. No accurate data are available indicating the proportion of the industry which is engaged in interstate commerce. Sen. Doc. No. 43, *Coordination of Motor Transportation*, 72d Cong., 1st Sess., p. 57. *Cf. Hours, Wages, and Working Conditions in the Intercity Motor Transport Industries, Part II, Motor Truck Transportation* (Federal Coordinator of Transportation, 1936), p. 191.

[8] See H. Doc. No. 89, Committee on Interstate and Foreign Commerce, 74th Cong., 1st Sess., pp. 3–6, 10–18; Sen. Doc. No. 152, *Regulation of Transportation Agencies*,

Congress prescribed detailed regulations of the industry comparable to those long since applicable to steam and electric carriers in interstate commerce. Act of August 9, 1935, c. 498, 49 Stat. 543; U. S. C. Sup. I, Title 49, Secs. 301–327. Petitioner has qualified as a common carrier under this legislation (R. 529). In view of the increasing burden of interstate transportation, both freight and passenger, assumed by the motor transport industry, Congress would have been unreasonable indeed if it had not intended through the National Labor Relations Act to bring to that industry the same measure of industrial peace which came to the railroads under the Railway Labor Act of 1926.

In like manner, the Act has been invoked against water transportation systems such as the United Fruit Company and Agwilines, Inc., against communication systems such as Western Union Telegraph Company, Mackay Radio & Telegraph Company, and The Associated Press, and against various enterprises in the Territories and the District of Columbia. Can it be said,

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73d Cong., 2d Sess., pp. 9, 13, 15–25; *Cf. Nashville, Chattanooga & St. Louis Ry. Co.* v. *Walters*, 294 U. S. 405. In order to meet this competition, the railroad carriers have acquired extensive interests in motor truck and bus operating companies (Sen. Doc. No. 152, *supra*, at pp. 279–324; *Coordination of Motor Transportation*, 182 I. C. C. 263, 277–278, 393–396 (1932)), and have recently introduced on a wide scale free pick-up and delivery service on less than carload freight, under approval of the Interstate Commerce Commission. *Pick-up and Delivery in Official Territory* (I. C. C. Docket Nos. 4191, 27425, Oct. 13, 1936).

with reason, that the probability is "plain enough" that Congress would not have enacted this statute in order to safeguard these vital fields of interstate and foreign transportation and communication against interruption by industrial strife? Congress made the contrary clear not only by its frequent declarations that the Act was to be effective to the extent of Federal power, but also by the separability provision in Section 15, and by the separate enumeration of unfair labor practices "in commerce" in Section 2 (7). See brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board*, pp. 111–115.

II

THE BOARD'S FINDINGS ON THE MERITS ARE SUPPORTED BY THE EVIDENCE AND ARE THEREFORE CONCLUSIVE

Petitioner contends that the Board's findings on the merits are not sustained by the evidence (Br. pp. 12–40). It is a sufficient answer that this issue is not open to petitioner, since it was not among the questions presented in its petition for a writ of certiorari. *Helvering* v. *Taylor*, 293 U. S. 507, 511; *Alice State Bank* v. *Houston Pasture Co.*, 247 U. S. 240, 242. Nevertheless, we address ourselves briefly to petitioner's argument, particularly as it bears on certain general aspects of the administration of the Act.

The Board's finding of fact on the merits (R. 530–545) were made after two hearings conducted

by individual members of the Board acting as trial examiners. All parties were given the fullest opportunity to adduce evidence and to cross-examine. The findings are detailed and show on their face the care with which every substantial item of evidence was considered and weighed. The Board specifically found that petitioner had discriminated against 18 of its employees "for the purpose of discouraging membership in the union, and that by such acts, [it] has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" (R. 544–545). The Board thus made a specific finding of discriminatory intent. On the basis of this finding, the Board concluded that petitioner had engaged in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of the Act (R. 547).

The court below, after reviewing the record in detail, concluded that "it was a reasonable inference" from the facts that the discharge of the men was connected with their membership in the union; that there was direct evidence that respondent's officials in certain cases expressly stated that the discharges were caused by the union activity of the men concerned (R. 593); and that "it cannot be said that there was no substantial evidence to support the Board's findings, and consequently the petition of the Board cannot be dismissed for failure of proof" (R. 594).

Section 10 (e) of the Act expressly provides that "the findings of the Board as to the facts, if sup-

ported by evidence, shall be conclusive". It is settled that in reviewing findings of fact under comparable statutory machinery and provisions, neither the Circuit Court of Appeals nor this Court will make its own appraisal of the testimony, but will reverse or modify only if the findings are clearly improper and there is no substantial evidence to support them. *Florida* v. *United States*, 292 U. S. 1, 12; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Del Vecchio* v. *Bowers*, 296 U. S. 280; cf. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 559–560; *Pick Mfg. Co.* v. *General Motors Co.*, 299 U. S. 3.

While petitioner contests the finality of the Board's findings measured by this test (Br. p. 3), it argues principally that the court below and this Court have the power to make an independent examination of the testimony on the question of discrimination, because this finding is alleged to be in violation of its constitutional rights under the Fifth Amendment (Br. p. 15). The authorities relied upon are *Crowell* v. *Benson*, 285 U. S. 22 and *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38. We submit that this argument is not well taken.

The *St. Joseph* case is one of a series in the field of public utility regulation in which the doctrine has developed that a claim of confiscation entitles the utility to "the independent judgment of the courts as to both law and facts." *State Com-*

mission v. *Wichita Gas Co.*, 290 U. S. 561, 569; *Ohio Valley Co.* v. *Ben Avon Borough*, 253 U. S. 287; *Baltimore & Ohio R. Co.* v. *United States*, 298 U. S. 349. However, recent decisions of this Court indicate that in this field there is, contrary to petitioner's contention (Br. p. 13) a difference in principle between the issue of confiscation, *i. e.*, the "taking" of physical property by the fixing of an inadequate rate of return, and other issues under the due process clause. *Acker* v. *United States*, 298 U. S. 426, 433–434; *Morgan* v. *United States*, 298 U. S. 468; *Baltimore & Ohio R. Co.* v. *United States*, 298 U. S. 349, 364, 368. See also *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 49.

The case of *Crowell* v. *Benson*, *supra*, upon which petitioner also relies, was restricted to a proceeding *inter partes*. 285 U. S. at pp. 51, 57–58.

It cannot be assumed that either of these cases overturned the established procedure of quasi-judicial bodies such as the Federal Trade Commission, upon which the present Act is patterned. Under the Trade Commission Act it is thoroughly established that if there be substantial evidence to support the finding, the courts will not make their own appraisal of the evidence. *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 63; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Kreuta* v. *Durning*, 69 F. (2d) 802, 804 (C. C. A. 2d). Similarly, with respect to other quasi-judicial tribunals,

the courts have refused to weigh the evidence, and have accepted as conclusive findings of fact which had substantial support in the record. See, *e. g.*, *Florida* v. *United States*, 292 U. S. 1, 12; *Virginian Ry.* v. *United States*, 272 U. S. 658, 665–666; *Phillips* v. *Commissioner*, 283 U. S. 589, 600; *Bartlett* v. *Kane*, 16 How. 263, 272; *United States* v. *Ju Toy*, 198 U. S. 253; *Bates & Guild Co.* v. *Payne*, 194 U. S. 106, 108–110.

Apart from this, the finding of discrimination under Section 8, subsections (1) and (3) of the statute at bar is not "jurisdictional" in the sense of the term used in the *St. Joseph* and *Crowell* cases. The finding of discrimination goes merely to the application of substantive provisions of the Act to an employer and employees admittedly engaged in interstate transportation. While such a finding of fact conditions the action of the Board, so does any other finding on any of the unfair labor practices; they are findings which "may appropriately be subjected to the scheme of administration for which the Act provides." *Crowell* v. *Benson*, 285 U. S. at 64–65. The administrative finding of discrimination under this Act would appear to be more remote from basic "jurisdictional" issues than administrative findings as to whether an employee's injury arose out of and in the course of the employment (*Voehl* v. *Indemnity Co.*, 288 U. S. 162) and as to whether an employee's injury was accidental or self-inflicted, *Del Vecchio* v. *Bowers*, 296 U. S. 280, which have been given

finality if supported by substantial evidence. If like finanlity may be given to the findings of the Interstate Commerce Commission as to whether an intrastate rate discriminated against and burdened interstate commerce, *Florida* v. *United States,* 292 U. S. 1, 12, then there can be no valid objection to the same rule as applied to a finding of the National Labor Relations Board on the merits of an unfair labor practice *admittedly* occurring "in commerce."

If petitioner's argument were consistently applied, it would overturn the entire procedure established in this Act for the determination of the facts on the merits in individual cases under any subsection of Section 8, even where, as here, the employment relationship admittedly exists, the employer and employee are admittedly engaged in interstate commerce, and the procedure before the Board conforms to the statute. No such conclusion is warranted from the cases relied upon, and no lower court has so construed the Act. See *Agwilines, Inc.,* v. *National Labor Relations Board,* decided Dec. 22, 1936 (C. C. A. 5th) and *National Labor Relations Board* v. *The Associated Press,* 85 F. (2d) 56, 58, in addition to the decision below (R. 592).*

* The statement in *Bradley Lumber Co.* v. *National Labor Relations Board,* 84 F. (2d) 97, 100 (C. C. A. 5th) upon which petitioner relies (Br. p. 16), was concerned with "jurisdictional findings." The same Circuit has made clear that the Board's findings on the issue of discrimination are

Finally, even if an independent examination of the facts be made, this does not require or justify disregard of the weight which may properly attach to the findings of the expert administrative body upon hearing and evidence. The petitioner, in seeking to upset the Board's findings, nevertheless "carries the burden of making a convincing showing", and the Board's findings will not be disturbed except as error is "clearly established" or as they are "plainly shown to be over-borne". *St. Joseph Stock Yards Co.* v. *United States,* 298 U. S. at 53, 54. The Board's findings here are clearly supported not only by substantial evidence but by the preponderance of the evidence. The situation at bar is therefore comparable to that in the *St. Joseph* case. The court below stated the applicable rule as that given in the *Algoma* case (R. 592), but nevertheless examined and weighed the evidence in detail in its decision (R. 592–594).

In considering the evidence in detail, it is important at the outset to note that in weighing the evidence, the Board did not, as petitioner contends (Br. p. 34), substitute its judgment for that of petitioner on the efficiency of the employees involved. No competent evidence on this issue was excluded.[5] Nor did the Board put the burden of

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conclusive if supported by evidence. *Agwilines, Inc.*, v. *National Labor Relations Board*, decided December 22, 1936 (C. C. A. 5th).

[5] Petitioner is mistaken in its assertion (Br. pp. 9, 11, 23) that the Board prevented it from submitting in evidence "the efficiency records of the union men discharged, together

disproof of discrimination on the petitioner. Of course the Board carries the burden of proof in

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with the efficiency records of the nonunion men not discharged in order that a comparison between the two sets of employees might be made". The fact is that the examiner gave petitioner wide latitude with reference to evidence on the efficiency question. Four types of records are referred to in the transcript, as follows: (1) Reports of a confidential investigator or "spotter" relative to the conduct of various bus operators during a ten day period beginning November 26, 1935, were offered by petitioner, were read into the record by petitioner (R. 291–295), and were admitted bodily (R. 218–219, Exh. 3). (2) Reports by petitioner to a casualty company concerning accidents in which any of the bus drivers here in question were involved, were offered by petitioner, England, petitioner's assistant general manager, testified from them (R. 297), and they were received in evidence (R. 311, Exh. 7). (3) Petitioner's garage superintendent, Wilsey, was permitted to testify respecting the efficiency of the garage employees here involved from his own records, despite the fact that the records were made up by him a few days before the hearing (R. 444–446). (4) Apart from all the foregoing, petitioner sought to introduce and the examiner excluded (R. 311) certain records respecting "service" or "road" calls on its bus operations. The records themselves were properly excluded because their purport was obscure, and, among other defects, they were not shown to be related to any particular employees (R. 310, 109–116). These records showed, according to petitioner, only the *number* of road calls in the few months preceding the discharges (R. 109, 114); petitioner's witnesses testified from their own recollections that this number was greater than for preceding periods (112, 311, 312, 109 *et seq.*). It is apparent that the exclusion of the records as such was not material. Petitioner made no request that they be identified and incorporated in the record for purposes of subsequent review.

Contrary to the repeated assertions in petitioner's brief (pp. 9, 11, 23), petitioner at no time offered specific evidence

the administrative proceedings, and did so in this case.[6] In the Board's brief in No. 365, *The Associated Press* v. *National Labor Relations Board*, pp. 97–98, it was pointed out that nothing in the Act or in the Board's proceeding in the various cases at bar trenches upon the normal exercise of the employer's right to discharge employees for inefficiency or any other reason including sheer caprice, provided, however, that the employer does not use the power of discharge as a means of in-

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on the efficiency records of particular employees retained, for purposes of comparison with those of the particular employees discharged. When the Board's counsel pressed petitioner's officers for such comparative data, either from records or from memory, petitioner's counsel stated that such data could not be had (R. 309). What does appear of record is Wilsey's testimony that he "could have written something" about all the garage employees, those retained as well as those discharged (R. 446), and Arnold's testimony that there were men still in his employ who should have been discharged long ago (R. 470).

[6] Petitioner's statement to the contrary (Br. p. 18) is based solely on the expert testimony of William M. Leiserson, Chairman of the National Mediation Board, and is wholly unwarranted. At the suggestion of counsel for petitioner, a stipulation was made whereby, subject to petitioner's general objection (R. 388), the expert testimony of this witness on the efficacy of the Act's provisions in eliminating industrial strife, given in another case before the Board, was incorporated in this record (R. 561–583). On cross-examination, the witness was asked by petitioner's counsel for, and accordingly stated his views on desirable and sound management practices in situations such as that at bar, but expressly declined to construe the requirements of this Act or to weigh the facts of this case (R. 393, 395, See also R. 398).

terfering with the right of employees to organize and choose representatives. In so far, therefore, as the ensuing discussion of the evidence refers to questions of efficiency, or other reasons given by petitioner in justification of the discharges, this is done only for the purpose of ascertaining the ultimate fact—petitioner's actual intent and purpose in discharging these particular employees.

In discussing the Board's findings, petitioner endeavors to create the erroneous impression that the Board had nothing more before it than the "coincidence" in point of time between the formation of the union and what it describes in its brief as a "housecleaning", *i. e.*, the discharge of 21 employees, all members of the union. Upon that petitioner builds its major thesis that "the Act, as construed and applied herein, throws upon the employer the burden of proof that in exercising his constitutional right to discharge he must be prepared to prove conclusively that the men discharged were discharged for some reason other than their union activities" (Br. p. 23), and then asks the rhetorical question, how an employer determined to "clean house" for inefficiency at a time when his employees were forming a union, can avoid subjecting himself to the stigma of violating the Act (Br. p. 18). Petitioner's major premise is untenable, as a review of the evidence plainly shows. The sequence of circumstances, the statements and admissions of petitioner's officers, the quality of the testimony, all taken together, are

such as to lead the trier of the facts irresistibly to the conclusion that petitioner looked to union membership and activity, not efficiency, in singling out for discharge the employees here involved.

The circumstances of the discharges were as follows: On February 24, 1936, a preliminary organization meeting of about 24 employees was held at the home of Theodore W. Frederick, one of the employees later discharged (R. 136, 173, 181–182). On the night of February 27, 1936, petitioner, through Hammond H. England, its secretary-treasurer and assistant general manager, first learned of the employees' attempts to form a union (R. 88, 314–315). The next morning, February 28, England admittedly went the rounds, asking employees about their membership in the union (R. 89–99). Later that day six bus drivers were summoned to petitioner's office and were questioned by England and Leon Arnold, petitioner's president, and Joseph Arnold, petitioner's vice-president and son of Leon Arnold, as to whether they had joined the union (R. 223, 473). When five of the six replied that they had joined, Leon Arnold recited certain unpleasant experiences he had had with a union and then told them to leave word the next day at the office as to whether they intended to continue their union affiliation (R. 223, 474). Among the operators so questioned were Magaha and Crissman, who did not comply with Arnold's request (R. 474, 223) and who were discharged five days

later. Leon Arnold admitted having spoken to employees about the union, admitted asking them to think it over and advise him of their intention in the matter, but denied asking them to do so by the next day (R. 466–468).

On February 29, promptly after petitioner learned of the formation of the union and the day after the first conversations referred to above, Wilsey, petitioner's garage superintendent, acting under instructions from Leon Arnold, inserted in the Washington Herald, of Washington, D. C., a notice that employees were wanted (R. 46, 49, 122, 422). Several hundred responses were received and from the applicants several were subsequently hired to fill the places of the men discharged (R. 427–428).

On the next day, March 1, 1936, petitioner distributed among the employees a small circular, described as a "personal message from Leon Arnold", which pointed out in part that "one sure way to acquire a poor standing, both in position and pay, in a business organization is to acquire a good standing in a clique" (Exh. 2). Petitioner's witnesses testified that the appearance of this "personal message" at the time of the help-wanted advertisement was a mere coincidence (R. 54, 315–321, 422); that petitioner had previously decided to discharge certain employees for inefficiency (R. 46, 412, 421); and that the circular was but the next one in a series which it obtained from a Chi-

cago firm for regular weekly distribution (R. 85–86).[7]

On March 3, 1936, at 11:30 P. M., the group which had attended the initial gathering on February 24, again met at Frederick's home and received the union charter from Clark, a representative of the national organization (R. 182). Present at this meeting and wearing a driver's cap was Joseph Arnold, petitioner's vice-president (R. 182–184, 375). Arnold read the charter, asked questions of Clark concerning the union, and entered into the discussion generally (R. 189–190). At one point he inquired whether the union would feed the men if they were fired (R. 189). When one of the employees advised Clark, who was unaware of Arnold's identity, that Arnold was an officer of petitioner and the son of Leon Arnold, Clark asked Arnold to leave. Arnold then asked if he could be-

[7] Petitioner refers to the word "coincidence" as one with which it is "pilloried by the prosecution" (Br. pp. 15, 38). But the record shows that the word was introduced and repeated by petitioner's own officers. Thus Wilsey testified that he told the various employees at the time of their discharge that their union membership was "a mere coincidence" (R. 414). England testified that when the message referring to "cliques" was issued by petitioner, its officers talked about it and "we thought it was a funny coincidence for it to come out at the particular time when we heard a union was being formed" (R. 316). Wilsey was asked, concerning a help-wanted advertisement inserted immediately after learning of the formation of the union, "Why was it [the 'ad'] put in on February 29th?" He answered: "It just happened to be a coincidence, and I thought I would get it over quick" (R. 422).

come a member or an honorary member. Upon receiving negative replies, he left the meeting (R. 190, 376). Arnold testified that Frederick had invited him to attend the meeting and explained that he wore the driver's cap because he had mislaid his hat (R. 374, 384). Frederick denied that he had invited Arnold and testified that he had never seen Arnold wear a driver's cap on any other occasion, although he had seen him a dozen times a day for a number of years (R. 183–184). Arnold admitted he was not a driver (R. 375). Regardless of whether Arnold concealed his identity, his presence at the meeting was a flagrant interference by the management with its employees' self-organization. It is apparent, moreover, why no employee asked him to leave, in view of the possibility of incurring the disfavor of the management.

Harmon, one of the men later discharged, testified that on his return to work from the meeting that night, Wilsey, the garage superintendent, expressed to him his surprise that Harmon had joined the union, and declared that Leon Arnold would put his buses on a lot and burn them before he would recognize the union. Wilsey asked Harmon if he could meet Clark, the representative of the national union organization. The two started back toward Frederick's home, but were advised by other employees whom they encountered that Clark had departed (R. 139–140). As they were returning to the petitioner's garage, they met Leon Ar-

nold, who had driven up in an automobile. It was then about 2:30 A. M. of March 4 (R. 140). Arnold was nervous and excited. Wilsey first denied having heard Arnold say anything, but then admitted that Arnold stated, among other things, that "things wasn't like that when he was a boy * * * and that he believed in every man standing on his own feet" (R. 422, 423–427).[8]

Later in the same morning (March 4) petitioner began to discharge its employees, and by March 6 had discharged a total of 21, one-fourth of its total force. All were members of the union, which then had about 57 members among petitioner's employees (R. 182). The six discharged on March 4 were bus operators; the seven discharged on March 5 were members of the day shift at the garage; and the eight discharged during the night of March 5–6 constituted the night shift at the garage.

The reason given all of the employees who were given any reason at all for the petitioner's action was their participation in the formation of the

[8] Arnold admitted he had met Wilsey and Harmon under the circumstances described above, even though it was unusual for him to be around the garage at 2:30 in the morning (R. 464). He denied that any conversation took place relative to unionism or anything else, even denying the statement which Wilsey attributed to him about things not being "like that when he was a boy" (R. 462). Wilsey also admitted having requested to see Clark, and when asked why, first answered: "You can't tell, I might have been interested, and nobody knows." When asked in what he might have been interested, he replied: "In investigating the union; and I may want to become a member." (R. 421.)

union. Thus, Theodore W. Frederick testified that when he was discharged by Wilsey, the garage superintendent, Wilsey stated he was not being discharged because of joining the union but because "of the underhanded way" that he had gone about it (R. 190). Harmon, working night foreman at petitioner's garage, testified that England likewise told him that he was discharged for "the way you went about it", adding in explanation of this last statement that Harmon "should have come to him for advice" (R. 141). Like reasons were given five other employees on the occasion of their respective discharges. James Atwell was told by England that he was discharged because he had gone to union meetings (R. 270); Roy Miller was told by Wilsey that he had been "misled", and was being fired on account of the union (R. 487–488); Robert T. Smith was told by England that "You guys started something and I got ahold of it before it went far enough to amount to anything" (R. 265); George Beall was told by Wilsey that the union was the cause, that he should not have joined "without saying anything about it", and that "the old man" [Leon Arnold] would not recognize the union (R. 233); Philmore Frederick was told by Wilsey that he was being discharged for having a union application blank in his possession (R. 241–242). Indeed Wilsey himself, after denying having had any conversation with Harmon, admitted upon further cross-examination that Harmon did say to him "I guess I am going on account

of the union", to which he had answered "Well, you can figure it out that way for yourself" (R. 432).

The Board, acting as would any reasonable trier of the facts, was justified in relying upon this mass of direct evidence that the discharge of these particular employees was motivated by petitioner's opposition to their organization activity, and in rejecting the denials of that testimony by petitioner's officers, particularly in view of the conceded sequence of events; the conceded acts and statements of petitioner's officers, and the evasive and contradictory character of their testimony.[9]

Petitioner insists, however, that the Board should have cast aside this mass of evidence and relied entirely on its claim that for some time prior to the discharges it had been troubled by inefficiency, that it had decided to "clean house", and that each of the employees here involved had been discharged on that account (Br. pp. 22 *et seq.*). In evaluating this contention, the character of petitioner's evidence to show that the inefficiency of these particular men was the basis for the discharges may properly be examined in determining the true motive for the discharges. *Supra,* pp. 23–24. It is apparent that in the considerable period of time in which most of these men were employed—ranging in the majority of cases from two

[9] See R. 428–429, 517–518, 315, 323, 328–329, 90, 413, 415–418, 421, 432, 444, 122–126, 361–364, 466–468. See also p. 29, footnote 8, *supra;* p. 39, footnote 13, *infra.*

to seven years—it is possible for petitioner *ex post facto* to refer to some instance in the course of their work as a ground for the discharge. At no time did petitioner offer testimony or records comparing the efficiency of the specific employees retained with that of the specific employees discharged (*supra*, pp. 21–23, footnote 5). Strongly indicative of the inconclusiveness of the grounds of inefficiency assigned by petitioner is the testimony of Wilsey, petitioner's garage superintendent, who made the selection of garage employees to be discharged (R. 57). In the course of his testimony, Wilsey referred to written notations which he had made about the men discharged (R. 446). He claimed that he had made mental notes of the inefficiency of these men during the course of their work over the preceding years, and had reduced them to writing only a few days before the hearing. When questioned about the fact that written notations were made only with respect to the men discharged and not with respect to all the employees under his supervision, he said, "I could have written something on all of them" (R. 446). Upon an appropriate record, the triers of the facts may reasonably infer that such incidents are pretexts to mask discrimination against employees because of union activity. See *Brotherhood of Railway Clerks* v. *Texas & New Orleans R. Co.*, 24 F. (2d) at 434; 281 U. S. at 560.

In the case at bar, all those discharged were union members; they had been employed over long pe-

riods of time during which they had received few, if any, complaints about their work; in not a single instance was a claim of inefficiency made at the time of discharge, and the particular incidents now referred to were not regarded at the time of occurrence as sufficient to justify discharge, lay-off, or even a reprimand, notwithstanding petitioner's established system of laying off drivers for definite periods on account of infractions of rules (R. 468), and of advising them of complaints (R. 339). Finally, it may also be noted that according to petitioner, no reasons whatever were given at the time of discharge, although it would seem that as recently as the evening of February 28, 1936, petitioner and its employees were "like one big family" (R. 466; see also R. 97); and that petitioner, in discharging more than half of its garage staff and replacing them with men hired through a newspaper advertisement published a few days before (*supra*, p. 26), acted with such haste that not all the places left vacant were filled for some days (R. 429), and five of those newly hired were subsequently discharged for incompetence (R. 429). Certainly the inference that petitioner's actual motive was the disruption of the organization of its employees is reasonable when it appears that the discharges followed hard upon the formation of the union, within a week after petitioner's officials received information about it, and that the intervening period is crowded with incidents showing that petitioner was actively endeavoring to prevent the

union movement and to persuade its employees not to join or continue therein. As the court below said, "It was a reasonable inference from these facts that the discharge of the men was connected with their membership in the union and there was also direct evidence that the respondent's officials in certain cases expressly stated that the discharges were caused by the union activities of the men concerned" (R. 493).

Motive, this Court has said, "is a persuasive interpreter of equivocal conduct", and petitioner is not entitled to complain because its activities were viewed in the light of the manifest interest and purpose revealed by all the circumstances and by the statements of its officers. *Texas & New Orleans R. R.* v. *Brotherhood,* 281 U. S. at 559.[10]

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[10] Petitioner contends that not all the union men were discharged and that more union men remained in its employ than it had discharged (Br. p. 40). This is scarcely material. It is obvious that petitioner did not need to discharge all its union employees in order to stamp out the organization among its employees; indeed, the discharge of one or two may be sufficient. Moreover, the union filed its charges under the Act immediately after the discharges in question, and the charges were promptly followed by conferences between the Board's regional director and petitioner's officers, and by the issuance of the complaint and notice of hearing (R. 9, 14, 51–52, 19). Those discharged included the union's financial secretary (West) and recording secretary (Theodore Frederick). Evidence that petitioner had other union members in its employ was not excluded, as petitioner implies (Br. p. 22), but was in fact brought out by the Board's counsel on direct examination (R. 194, 196, 197).

Petitioner also refers to rumors and charges just prior to the discharges here involved, emanating from unidenti-

The four drivers—West, Hall, Magaha, and Crissman—were ostensibly discharged on the basis of certain reports made in November 1935 by Mason, a special investigator or "spotter" who rode the buses, and of certain complaints received from passengers (R. 100, 326; Br. pp. 26–28). Petitioner's evidence lacked specification as to the complaints from passengers, except in the case of Crissman, and the complaint in that case was of minor importance and had been made eight months before (R. 325, 406, 399–400, 475.[11] The reports referred to disclosed a few alleged irregularities; none of a serious nature, occurring several months prior to the

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fied persons, that buses would be permitted to run wild, and that brakes were being tampered with (Br. pp. 21–22). But Storer, the bus inspector who tested the brakes, testified that he had not found any evidence of tampering with any of the buses (R. 78); and England's testimony shows he could not possibly have taken the rumors into account in selecting for discharge the particular employees here in question (R. 361–365).

[11] The improbability that the passenger's complaint could have played a part in petitioner's singling Crissman out for discharge is especially strong when it is noted that the passenger's complaint was provoked by Crissman's adherence to the rules of the company in each of the four instances he cited; viz, Crissman's refusal to honor during rush hour a transfer given the passenger by the operator of the preceding bus on the same route (R. 400), his refusal to issue a transfer to him during rush hours but, instead, going to the pains of overtaking the bus he did wish to transfer to and providing passage for him in that bus (R. 405), his refusal to admit a passenger on the bus with a dog (R. 409), and his failure to "be sociable" with passengers by talking with and passing the time of day with them while driving the bus (R. 407, 475).

date of discharge (R. 292–295).[12] One of the complaints now cited as the ground for Holt's discharge was discussed with Holt by Arnold at the time. Arnold told Holt his record had been "pretty good" and did not penalize him in any way (R. 171–172). On the other hand, neither West nor Hall had ever had an accident (R. 339, 336), and Crissman had not been involved in an accident for more than two years (R. 257). While Magaha had had several in the two years preceding his discharge, none was serious (R. 329, 331, Exh. 7), and none was considered by petitioner sufficient in itself to warrant discharge or other disciplinary action at the time of occurrence, notwithstanding its policy not to retain men who had accidents (R. 334). Magaha's accident records, according to England, were merely "taken into consideration" along with "other complaints" (R. 331).

[12] One ground relied upon, for example, is that on a bus crowded with passengers, the driver failed in isolated instances, to collect an additional fare from a passenger on entering a zone where additional fare was required. In crowded buses operated by one man who admits and lets out passengers, handles the mail, and looks after the equipment en route, the evidence shows that it is a physical impossibility for the one operator to keep track of the various zones in which every passenger enters, without an occasional slip-up (R. 428). So inconsequential were these omissions deemed by petitioner that other employees, as to whom similar omissions were noted by the investigator, are still employed (R. 326, 327), and that in the months following such report the petitioner at no time called any of its drivers to account or asked them to be more careful in the future.

These four drivers had been employed by petitioner for periods varying from two to six and one-half years (R. 168, 220, 255, 262). Each appeared to be a capable and desirable employee until he joined the union and, as previously pointed out (p. 25, *supra*), declined to resign from it. Arnold himself testified he was proud of the accident record of the company, that he had secured a reduction in insurance rates as a result of it, and that this record was accomplished through the aid of "some" of the employees discharged (R. 68–69). The Board's finding that discrimination was exercised as to these four employees is plainly supported not only by substantial evidence but by the overwhelming weight of evidence.

The same inference must reasonably be made with respect to the 14 garage employees here involved. The weight of the grounds now assigned by petitioner as the reasons for the discharge of these employees must be appraised in the light of Wilsey's statement that he "could have written something" on all of the garage employees, those retained as well as those discharged (R. 466; *supra,* p. 32). The seven men on the day shift—Miller, Theodore W. Frederick, Beall, Chase, Birch, Philmore W. Frederick, and McDonough—were discharged on March 5. There was ample evidence that the discharges of Miller, Beall, and the two Fredericks were expressly put on the ground of their union activity. *Supra,* p. 30. No complaints had ever been made as to McDonough

(R. 247), and petitioner, indeed, offered no evidence whatever to establish Chase's inefficiency. Theodore Frederick had been employed for over seven years and had been advanced to the position of working day foreman (R. 181). While it was stated that he had permitted the employees to converse during working hours on personal matters (R. 412), it was admitted that this was not contrary to the company's rules and would not be ground for criticism (R. 415, 436). With respect to Philmore Frederick, Wilsey said that while he had always been "mild", he became "kind of dominant" during the months preceding his discharge (R. 422). Wilsey referred to one incident where, on asking Philmore Frederick why he did not buy tools, the latter attributed his failure to do so to his low salary (R. 442). Wilsey in no way indicated, at the time the answer was made, that he deemed it either insolent or improper, as, indeed, he could not in view of the wide discrepancy between the salary of a helper ($18 weekly) and that of a regular mechanic ($25 to $35 weekly).

Miller was told by Wilsey on being discharged that his work had been "perfectly satisfactory, and if it wasn't, you wouldn't be here two days" (R. 487). Wilsey testified that Harmon, the night foreman, told him he wanted a better mechanic than Miller (R. 507). Harmon denied this, and testified that he told Wilsey additional men were required (R. 522). As to Miller, Harmon testified that he was as good a mechanic as he had ever had

(R. 520). Indeed, on Harmon's fortnightly night off, Miller, prior to his transfer to the day shift about March 1, 1936, had regularly been assigned to act as foreman on the night shift (R. 492, 513). Only the vaguest generalizations were cited to support petitioner's claim that Beall and Birch were inefficient. Neither had ever received a complaint concerning his work or been reprimanded (R. 449, 268, 236).

The same vague and unsubstantiated allegations of inefficiency were made in the case of the seven union members—Harmon, Garrison, Moore, Dove, Smith, McCaulley, and Atwell—on the night force at the garage who were discharged during the night of March 5–6, 1936.[11] Garrison, Moore, and Dove were bus washers. England, petitioner's assistant manager, testified that passengers had com-

[11] An example of Wilsey's evasive and loose testimony on the grounds of alleged inefficiency is the following: He stated at one point that he relied for his judgment of the men on the foreman, whose "word is law with me" (R. 415). Immediately thereafter, he testified: "I could observe these things for myself, and I would walk through the shop and stay later and look around a lot" (R. 415). This is followed by an assertion that he would come around at night and watch the place from the outside without being seen by any of the employees (R. 416–417). Probably realizing the improbability of his assertion that he could notice conditions inside in that manner, he then asserted that by watching from the outside, he occasionally could notice the commission of an error which he would immediately walk in to correct. When asked how many times in his eight years at the garage he had ever done so, he gave a page and a half of irresponsive testimony before admitting that he did not know (R. 418).

plained of soiling their clothes in the buses during the winter; that the company had had to pay for cleaning clothes in one or more cases; that the fault must have been with the night bus washers; and that Moore and Garrison were discharged on that account (R. 302–4). He failed to mention Dove, although seemingly Dove should have shared the responsibility so readily fixed on the other two men. The record showed, however, that during the bad weather of the winter months, time which Garrison, Moore, and Dove otherwise devoted to cleaning was frequently entirely consumed in handling chains for the tires (R. 142, 279). It does not appear that any of these men were apprised of these alleged complaints at the time, notwithstanding petitioner's practice to do so (R. 339).

As for Smith, a service man, McCaulley, a mechanic, and Atwell, a bus greaser, there was sufficient evidence to show the discharges of Smith and Atwell were expressly put on their union activity (*supra,* p. 30). Wilsey testified that on several occasions buses supposedly serviced by Smith had run out of fuel; that the night foreman had told him that McCaulley was a poor mechanic; and that Atwell had had a bad grease record for six and one-half years (R. 448, 447, 441–2). Smith testified that he had received only one complaint of a bus running out of gas and that had occurred six months prior to his discharge (R. 265–266). Petitioner failed to explain why, if Atwell had had a bad record for over six years, it had tolerated him

until just the moment of his union affiliation. Indeed Atwell testified that, on being discharged, England told him: "You have kept your work up good, and we never had any trouble with you" (R. 270). As for Harmon, he was the oldest employee in point of service (R. 168); England had told him he had always done good work (R. 141); and according to Wilsey, he had been promoted to the rank of foreman "because of his knowledge * * * and because of his ability" (R. 420). Petitioner sought to put on Harmon the responsibility for the "unsatisfactory" conditions in the shop (R. 33), but Wilsey, as garage superintendent, had a like responsibility (R. 112). Moreover, petitioner did not directly refute Harmon's testimony (*supra*, p. 30) that England referred to "the way you went about" joining the union as the cause of his discharge (R. 141); and Wilsey's testimony regarding his conversation with Harmon on the occasion of his discharge constituted a virtual admission that the union was at the bottom of the matter (*supra*, pp. 30–31).

There was, therefore, ample evidence in the record for the findings of the Board. It is difficult to take seriously petitioner's pretended dilemma—how to go about "cleaning house" on grounds of inefficiency simultaneously with the development of a union movement among employees (Br. p. 18). It is incredible that an employer acting in good faith, and without being motivated by opposition to the union at such a time, would question em-

ployees about their union affiliation as soon as he learned about it, advise them against it, ask them to reconsider and give their answer the following day, attend a union organization meeting, and discharge a large proportion of his working staff, all being union men, within one week of his learning of the formation of the union, including in this group many men who had never received any complaint about their work, and bring home to them no reasons for their discharge except in seven instances, where union activity was expressly given as the cause of discharge. Explanations offered in an attempt to evade the inference of discrimination deriving from the foregoing circumstances were vague and unsupported by specific proof. On the entire record, it was "a reasonable inference", as the court below said (R. 593), that these employees were in fact discriminated against to accomplish petitioner's persistent purpose to discourage and disrupt the newly launched organization of its employees. This was the "housecleaning" which petitioner intended and accomplished.

The conclusion that the discharges constitute unfair labor practices within the meaning of Section 8, subsections (1) and (3), follows as a matter of course. Petitioner's wholesale elimination of union members was a patent interference with self-organization and an obvious discrimination in regard to hire and tenure of employment in an effort to stamp out the union.

CONCLUSION

Wherefore, the judgment of the court below should be affirmed.

Respectfully submitted.

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FEBRUARY 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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No. 469

IN THE

Supreme Court of the United States

OCTOBER TERM 1936

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF AMERICAN FEDERATION OF LABOR *and* AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, *AMICI CURIAE*

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IN THE

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No. 469

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF OF AMICI CURIAE

The Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, an unincorporated association, represents to this Honorable Court that it is an international labor union consisting of division associations comprising motormen and conductors and other workers operating cars and trains, and bus and coach operators, garage men and other workers engaged in the electric railway and motor coach industry in the United States and Canada. It is affiliated with the American Federation of Labor.

The American Federation of Labor represents to this Honorable Court that it is a federation of national and international trade and labor unions and State and central labor bodies.

Members of both the Amalgamated Association and the American Federation of Labor are vitally interested in the legal questions involved in this case, and by reason thereof they respectfully ask permission to file this brief as *amici curiae* in support of the constitutionality of the National Labor Relations Act.

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit is reported in 85 Fed. (2d) 990.

STATEMENT

(a) Statute Involved

This case came before the Circuit Court of Appeals upon the petition of the National Labor Relations Board for the enforcement of an order issued by the Board pursuant to Section 10 of the National Labor Relations Act (July 5, 1935, c. 372, s. 16, 49 Stat. 449; 29 U. S. C., s. 151-166).

The Act creates a National Labor Relations Board and provides administrative and court procedure for the prevention of certain "unfair labor practices affecting commerce" (Section 10(a)). The Act defines "commerce" to mean:

> "trade, traffic, commerce, transportation or communication among the several States, or between the District of Columbia * * * and any State * * *, or within the District of Columbia * * *." (Section 2(6))

The term "affecting commerce" is defined to mean:

> "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." (Section 2(7))

Section 7 provides that

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Section 8 defines five unfair labor practices on the part of employers, two of which are here involved:

> "(1) To interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7."

> "(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

The Board, under the authority vested in it by Section 6 of the Act, issued its general rules and regulations on September 14, 1935, and these rules as amended April 27, 1936, set out the procedure through which cases arising under the Act are dealt with by the Board.

The case at bar is concerned only with protection to the self-organization of employes as guaranteed in Section 8(1) and (3) of the Act. Issues relating to majority rule, or the "company union", so-called, or refusal of the employer to bargain collectively, which might arise out of the other unfair labor practices enumerated in Section 8, are not here involved.*

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* All of the provisions of the Act are not included in the present controversy. In the Act (Section 15) is the usual separability clause, which, we will assume, this Court will accord full effect.

(b) Proceedings of the Board in This Case

On March 5, 1936, Local Division 1079 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America (hereinafter called "the union") filed charges under the Act that its employer, the Washington, Virginia & Maryland Coach Company (hereinafter called "petitioner") had violated the Act in that it had engaged in unfair labor practices within the meaning of subsections (1) and (3) of Section 8 thereof by discharging and refusing to reinstate some twenty employes because of their membership and activity in the union. The Board thereafter issued a formal complaint and notice of hearing, stating the charges, and hearings before the Board were had pursuant to the provisions of the Act.

(c) The Board's Findings of Fact

At the hearings conducted before duly constituted Trial Examiners of the Board, evidence was offered to sustain the allegations of the complaint based on the charge. The petitioner appeared and objected to the jurisdiction of the Board and asked that the complaint be dismissed on constitutional grounds; its motion being denied, the petitioner, without waiving its constitutional objections, filed an answer to the complaint and offered testimony in opposition. The Board found that the employes had been discharged in violation of the provisions of Section 8, subsections (1) and (3) of the Act; that in its business the petitioner was engaged in interstate commerce between the District of Columbia and the States of Maryland and Virginia; and that its conduct in discharging its employes burdens and obstructs interstate commerce and has led and tends to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

The facts, the proceedings before the Board, and the Board's findings of fact are more fully set out in its brief filed herein.

ARGUMENT

I

The Board's Findings of Fact Are Fully Supported by the Evidence; and Under the Facts So Found Petitioner Has Engaged in and Is Engaging in Unfair Labor Practices Affecting Commerce.

Section 10(e) of the Act provides that the findings of the Board as to facts, if supported by evidence, shall be conclusive.

It is firmly established by the decisions of this Court that, in reviewing findings of the Federal Trade Commission, a court will not consider the testimony anew and make its own findings, since the weight to be given to the evidence and the inferences to be drawn therefrom are matters for the Commission, the fact-finding body;—the function of the courts is to review the Commission's findings and to reverse or modify only if those findings are clearly improper and there is no evidence to support them. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Helvering* v. *Rankin*, 295 U. S. 123, 131. The provisions of Section 10(e), as stated above, are almost identical with provisions of Section 5 of the Federal Trade Commission Act* (15 U. S. C., s. 45); and the functions of the National Labor Relations Board are analogous to those of the Federal Trade Commission.

The duty of weighing conflicting evidence, the weight to be given to the facts and circumstances admitted, and the inferences reasonably to be drawn from them, are matters for the National Labor Relations Board created by Congress for that purpose. *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n,*, 273 U. S. 52, 63; *Federal Trade Commission* v. *Curtis Publishing Co.*, 260 U. S. 568. (See

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* 38 Stat. 717; 15 U. S. C., s. 41-51.

also *Federal Radio Commission* v. *Nelson Bros. B. & M. Co.*, 289 U. S. 266, and cases cited on p. 277.) We are confident that this Court will consider that the Board competently judged all of the evidence and made proper findings based thereon.

II

The Act in General with Respect to Power of Congress to Regulate Commerce

The power vested in Congress to regulate interstate commerce has been too often considered by this Court to require an extended discussion here of the extents and limits of that power (*Gibbons* v. *Ogden*, 9 Wheat. 1; *Swift & Co.* v. *United States*, 196 U. S. 375; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1); and that this power includes the regulation of the agencies of interstate transportation is also well settled. *Second Employers' Liability Cases*, 223 U. S. 1; *Minnesota Rate Cases*, 230 U. S. 352; *Houston E. & W. T. R.* v. *United States*, 234 U. S. 342; *Dayton-Goose Creek R.* v. *United States*, 263 U. S. 456; *Florida* v. *United States*, 292 U. S. 1.

The National Labor Relations Act does not apply to all employers and employes. It is clearly apparent that Congress intended that each case arising under the Act with respect to the unfair labor practices arising thereunder should be considered on its own facts. The Board's authority cannot extend beyond the prevention of those unfair labor practices "affecting commerce"—that is,

> "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce."

The power conferred upon the Board, however, is as extensive as the power of Congress under the commerce clause.

Petitioner operates an interstate transportation system. In a leading case the Court noticed the interruption to interstate commerce arising through a strike and exerted its power to lift that obstruction to interstate commerce. *In re Debs*, 158 U. S. 564. In other cases the Court has taken note of interruptions to interstate commerce even though no agency of interstate transportation was directly involved, and exercised its inherent power to remove such obstructions. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443; *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Ass'n.*, 274 U. S. 37.

The findings of Congress with respect to the effect of strikes and lockouts on commerce are incorporated into the Act in Section 1 thereof and, unless upon the basis of fact these findings of Congress are unreasonable and arbitrary, the Court will accept them. In *Stafford* v. *Wallace*, 258 U. S. 495, the Court recognized that it is primarily for Congress to consider the causes of threats and obstructions to interstate commerce, and the Court said that it would not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it were clearly non-existent.

As above stated, this case is concerned only with the application of the Act to the transportation system of the petitioner.

The petitioner has asserted in the court below that "the primary and fundamental purpose of the present Act is to accomplish compulsory collective bargaining". This assertion completely overlooks the distinction between the right to organize and bargain collectively (which is the only issue involved in this case), and the facts constituting a refusal by the employer to bargain collectively, an issue not before the Court at all. A similar argument on behalf of the railroad in *Texas & New Orleans R. R.* v. *Brotherhood*, 281 U. S. 548, was rejected. The Court there observed that the pro-

hibition by Congress of interference with the selection of representatives, instead of being an invasion of a constitutional right, was a recognition of the right to select representatives for the purpose of collective bargaining.

If collective bargaining, as a means of removing obstructions from interstate commerce, is to be substituted for strikes in settling wages and working conditions, and if Congress is to assure the basis for collective bargaining by providing that each side is to be safeguarded in selecting its representatives for these negotations, free from interference from the other side, then the *sine qua non* is that the employer must not be allowed to coerce the organization of the employes and the selection of its representatives by discharging those employes who are active in forming or directing this organization, for no reason other than this activity. If such employes can be discharged for union activity with impunity, the law which requires that an employer engaged in interstate commerce must not interfere with the union of his employes becomes a farce.

The National Labor Relations Act, in its general scope and aim is, we submit, within the power conferred by the commerce clause of the Constitution. *Texas & New Orleans R. R.* v. *Brotherhood of Railway Clerks, supra,* is squarely in point on all of the issues in this case and conclusively affirms the power of Congress to regulate commerce to the extent and in the manner provided for in the National Labor Relations Act.

III

Texas & New Orleans R. R. v. Brotherhood Is Controlling in Instant Case

(a) THE ACT IS A VALID EXERCISE OF THE POWER OF CONGRESS TO REGULATE COMMERCE

This case concerns only the application of the National Labor Relations Act to the interstate transportation system operated by petitioner. This discussion of the application

of the Act will be confined, therefore, to whether or not it is effective as applied to such a transportation system.

The National Labor Relations Act extends to other industries which are engaged in interstate commerce the same prohibition against interference by an employer with the right of employes to organize and bargain collectively as the Railway Labor Act does to the railroads. Congress has found, and has so stated in Section 1 of the Act, that the

> "denial of employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining leads to strikes and other forms of industrial strife or unrest which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety or operation of the instrumentalities of commerce; (b) occurring in the current of commerce • • •"

Unless Congress has made a mistake in factual findings the National Labor Relations Act must have direct applicability to the petitioner's business.

Not the National Industrial Recovery Act, but the Railway Labor Act and its predecessors and the principles of the National War Labor Board, of which Chief Justice Taft was Chairman, are the historical predecessors of the National Labor Relations Act. The Railway Labor Act of 1926 as amended (44 Stat. 577; 48 Stat. 1185) was dealt with in *Texas & New Orleans R. R.* v. *Brotherhood of Railway Clerks, supra;* and on the relatively narrow issue before this Court in the case at bar the *Texas & New Orleans* case is conclusive.

More than fifty years ago Congress began a consideration of legislation for the settlement of labor disputes on the railways and in 1888 enacted a law for the voluntary arbitration of railway labor disputes (25 Stat. 501). Ten years later Congress supplanted this with the Erdman Act (30 Stat. 424), which provided for governmental mediation and for voluntary arbitration. The Newlands Act in July, 1913

(38 Stat. 103) created a permanent board of mediation on the railways. In 1916 the Adamson Act (39 Stat. 721) was passed, establishing an eight-hour day for train operators. The Transportation Act of 1920 followed, and under Title III (41 Stat. 469) there was created the Railroad Labor Board with power to hear and decide disputes and provide for self-organization and collective bargaining by employes. These provisions were sustained by this Court in *Pennsylvania R. R.* v. *United States R. R. Labor Board*, 261 U. S. 72 (1923), and in *Pennsylvania Federation* v. *Pennsylvania R. R.*, 267 U. S. 203 (1925). The Railway Labor Act of 1926 (44 Stat. 577) supplanted Title III of the Transportation Act of 1920 and as amended by Congress June 21, 1934 (48 Stat. 1185) and April 10, 1936 is now the law which prohibits the railroads from interfering with the right of employes to organize and has constituted a model for the National Labor Relations Act.

The Railway Labor Act sets up the National Mediation Board to assist in the settlement of labor disputes through mediation, provides for the enforcement of awards in voluntary arbitration proceedings between parties to disputes, and authorizes the establishment of adjustment boards through voluntary agreement for the purpose of interpreting and applying agreements made by the parties. That Act establishes the same principles* of protection to the right of self-organization and collective bargaining that Congress has now incorporated into the National Labor Relations Act; and those principles are the groundwork of the whole scheme of arbitration and mediation set up by that Act. To insure effective dealing by workers through repre-

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* Since the decision of this Court in the *Texas & New Orleans* case the right of self-organization and collective bargaining has been embodied in the Norris-LaGuardia Anti-Injunction Act (40 Stat. 20; 29 U. S. C., s. 102); the Bankruptcy Amendments of 1933 (47 Stat. 1481) and 1934 (48 Stat. 922; 11 U. S. C., s. 207(l)(m)); the Act for the Coordination of Interstate Railroad Transportation (48 Stat. 214; 49 U. S. C., s. 257(e)); and in the Railway Labor Act Amendments of 1934.

sentatives and to make the representatives truly representative, that Act (Section 2 (3)) provides:

> "Representatives for the purposes of this Act shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

In the *Texas & New Orleans* case the Brotherhood of Railway and Steamship Clerks, comprising ticket sellers, baggagemen, train despatchers and similar clerical employes, brought suit in the United States District Court to enjoin the Texas & New Orleans Railroad from violating the Railway Labor Act of 1926, alleging that the railroad had interfered with and coerced employes in their self-organization and had established by this means an association of its employes with which it purported to deal in the place of the Brotherhood, in violation of the above quoted part of Section 2 of the Act. The Circuit Court of Appeals affirmed the decree of the District Court granting a permanent injunction against the railroad, and on appeal this Court affirmed the decree below and found the railroad guilty of contempt for failure to comply with a preliminary injunction.

This Court unanimously upheld the validity of the Railway Labor Act under the commerce power. The right of Congress to guarantee freedom of organization, to prohibit the company-dominated union and to prevent employers from requiring membership or non-membership in any union, was completely sustained. The decree of the District Court so affirmed had provided (1) that the company union be disestablished; (2) that the Brotherhood be reinstated as representative until the employes by secret ballot should make a choice; and (3) that certain employes who had been discharged for their activities in behalf of the Brotherhood

should be restored to service. The present Chief Justice wrote in the opinion in that case:

> "We entertain no doubt of the constitutional authority of Congress to enact the prohibition. The power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697); to 'foster, protect, control and restrain' (*Second Employers' Liability Cases*, 223 U. S. 1, 47). Exercising this authority, Congress may facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation. In shaping its legislation to this end, Congress was entitled to take cognizance of actual conditions and to address itself to practicable measures. The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." (281 U. S. 548, 570)

The principles therein enunciated were subsequently reaffirmed in *Railroad Retirement Board* v. *Alton*, 295 U. S. 330, 369, 377.

A comparison of the *Texas & New Orleans* case with the case now before the Court for determination cannot but show, we feel, that the decided case is controlling and final on the issues here involved. The duties of the employes of the petitioner are as directly connected with actual interstate movement of commerce as those employes involved in the *Texas & New Orleans* case—here they are bus drivers, repairmen and garage helpers; there they were baggagemen, ticket sellers, train despatchers and other clerical employes. The essence of the statutory provisions in each case is the prohibition of interference or coercion in self-organization and the selection of representatives. Then, too, the businesses subjected to the regulation of these statutes are so nearly the same as to make it practically impossible to find a distinction between them so far as their activities in commerce are concerned.

The tremendous growth of the motor transportation industry during the last few years has developed a network of freight and passenger lines reaching into almost every community in the country. Motor trucks and motor buses, as agents of interstate transportation, seriously compete with the railroads. That such competition should not work too adversely to the railroads, the Interstate Commerce Commission in recent months exerted its authority to lower passenger rates on railroads. Federal regulation of the motor transportation industry, under the Motor Carrier Act, will be an accomplished fact within the next few months. The Interstate Commerce Commission is now engaged in setting up an elaborate system of regulation under that Act.*

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* Before this Act was passed and while it was being considered by Congress, it was explained on the floor of the Senate that provisions in the Motor Carrier Act for protection to employes in self-organization and collective bargaining were made unnecessary because the National Labor Relations Act would cover the field of motor transportation and would make the inclusion of special provisions with respect to self-organization and collective bargaining unnecessary in the Motor Carrier Act (Congr. Record, 74th Congress, 1st Session, Vol. 79, p. 5887).

The intent of the law-making body to protect, safeguard and promote the free flow of commerce through the agencies of interstate transportation is apparent on the face of the National Labor Relations Act. The power to accomplish this intent by encouraging amicable adjustments of disputes through guaranteeing to employes in interstate transportation the right of self-organization and collective bargaining is conclusively affirmed by the *Texas & New Orleans* case.

(b) THE ACT DOES NOT CONTRAVENE THE FIFTH AMENDMENT

Again on the issue of due process, on the facts of this case *Texas & New Orleans R. R.* v. *Brotherhood, supra,* is controlling. We will not advert again to the facts in that case, which we have discussed above, nor to the striking similarity of those facts and the statutory provisions involved to those in the instant case. Suffice it to say that this Court in the *Texas & New Orleans* case recognized that the right of self-organization belonging to employes has long been accepted; and that a law looking to its protection is a valid exercise of the commerce power by Congress when applied to agencies of interstate transportation. The Court referred with approval to *American Steel Foundries* v. *Tri-City Central Trades Council, supra,* in which Chief Justice Taft wrote:

> "They [labor unions] were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what

> they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court."

The Court said, too, in the *Texas & New Orleans* case, that "the prohibition by Congress of interference with the selection of representatives * * *, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." Thus, any argument to the effect that this Act is violative of the Fifth Amendment in that it interferes with the private right of contract must fail.

We note that the petitioner in its briefs in the court below asserts that the Railway Labor Act of 1926, which was before the Court in the *Texas & New Orleans* case, provided for a voluntary submission to arbitration by both parties, that is, by the railroad and its employes. The petitioner relies on a discussion by the Court beginning on page 564 of that opinion (281 U. S.) where the Court discusses those provisions of that Act with respect to voluntary arbitration as opposed to a system of compulsory arbitration, but that decision says in that very same paragraph that "Congress buttressed this policy by creating certain definite legal obligations." The argument that the general discussion of the arbitration provisions of the Railway Labor Act has any bearing on Section 2 (3) thereof is specious indeed. There is nothing in the National Labor Relations Act which prevents voluntary submission to arbitration of any dispute between the parties.

The principles on the issue of due process enunciated in the *Texas & New Orleans* case are consistent with those general principles laid down from time to time by this Court. The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases; the Fifth Amendment does not prohibit government for the public welfare, but merely conditions the exertion of the admitted power by requiring that the means selected be not

unreasonable, arbitrary or capricious and that they have a real and substantial relation to the object sought to be attained. *Nebbia* v. *New York*, 291 U. S. 502. These principles are the basis for many laws affecting the employer-employe relationship which have withstood attacks made upon them based on the due process clause. Numerous instances where valid regulation has restricted the right of contract are noted in *Nebbia* v. *New York, supra*, Note 25. The National Labor Relations Act affects the employment relation to a lesser degree than do many of the regulations upheld in the cases therein noted. (See, for example, laws upheld in *Holden* v. *Hardy*, 169 U. S. 366; *Bunting* v. *Oregon*, 243 U. S. 426; *Patterson* v. *The Eudora*, 190 U. S. 169; *New York C. R. Co.* v. *White*, 243 U. S. 188.

(c) THE ACT DOES NOT CONTRAVENE THE SEVENTH AMENDMENT

Then, too, the *Texas & New Orleans* case decisively overrules the objection that the right of trial by jury has been denied to the petitioner with respect to the order for reinstatement with back pay authorized by Section 10(c) of the National Labor Relations Act. In the *Texas & New Orleans* case the order under the Railway Labor Act required reinstatement with back pay of three workers discriminated against and discharged in violation of law. This part of the order was upheld as not having exceeded proper enforcement of the Act.

In the case at bar the terms of the order are practically the same as those of the decree, except for the number of workers discharged. The Board's order requires the petitioner to "make whole" the employes discharged for the wages lost through their discharge in violation of the Act.

The enforcement provisions of this Act were unknown at common law. The terms of the order to cease and desist and make whole the employes by affirmative action are equitable in nature. *Pennsylvania Federation* v. *Pennsylvania R. R.*, 267 U. S. 203; *Block* v. *Hirsh*, 256 U. S. 135; *Barton* v. *Bar-*

bour, 104 U. S. 126. See also *Shields* v. *Thomas*, 59 U. S. 253, in which, of the constitutional provision "that in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved", it was said:

> "This provision, correctly interpreted, cannot be made to embrace the established, exclusive jurisdiction of courts of equity, nor that which they have exercised as concurrent with courts of law; but should be understood as limited to rights and remedies peculiarly legal in their nature, and such as it was proper to assert in courts of law, and by the appropriate modes and proceedings of courts of law."

(d) ADAIR V. UNITED STATES, 208 U. S. 161, COPPAGE V. KANSAS, 236 U. S. 1, AND CARTER V. CARTER COAL CO., 298 U. S. 238, ARE INAPPLICABLE TO THE CASE AT BAR.

The court below considered the argument but refused to concede that any of these three cases have any weight with respect to the issues in the present case.

The *Texas & New Orleans* case rejected as inapplicable *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, the Court saying:

> "The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds."

If the *Adair* and the *Coppage* cases were inapplicable in the *Texas & New Orleans* case, they are equally inapplicable in the instant case. Those cases held invalid, on grounds of

due process, a law making it a criminal offense to discharge employes because of membership in a labor organization and another law making it a criminal offense to require as a condition of employment that employes refrain from such membership. As expressly stated in the *Texas & New Orleans* case, those two decisions have no force with respect to the question involved here.

Carter v. *Carter Coal Co., et al.*, 298 U. S. 238, is not in point here. There this Court has said that "commerce" is the equivalent of the phrase "intercourse for the purpose of trade", and that the mining of coal does not constitute such intercourse. But will the Court say that the transportation of freight and passengers and mail in interstate commerce by motor bus does not constitute such intercourse? Plainly, the Bituminous Coal Conservation Act of 1935* involved in the *Carter Coal Company* case was different in theory and application from the Act here under discussion. The "primary contemplation" of the former Act is stabilization of the industry through the regulation of labor and the regulation of prices; the primary contemplation of the National Labor Relations Act is the lifting of obstructions to commerce caused by labor disputes arising out of a denial to employes of the right to bargain collectively.

IV

The Act Contains No Unconstitutional Delegation of Power

It has been urged that the National Labor Relations Act is invalid because its terms embody an unconstitutional grant of legislative or judicial power to the Board. Such an argument is not well founded in view of the decisions of this Court, which has recently *(Panama Refining Co., et al.* v. *Ryan, et al.*, 293 U. S. 388 at page 421 *et seq.)* reviewed at length the limitations upon the power of Congress to lay

* 49 Stat. 1008; 15 U. S. C., ch. 17.

down policies and establish standards, leaving to an administrative authority the duty of "making subordinate rules within the prescribed limits and the determination of facts to which the policy, as declared by the legislation, is to apply". In respect to the case at bar the argument has been answered in the decisions of this Court having to do with laws similar to the National Labor Relations Act. *Federal Radio Commission* v. *Nelson Bros. B. & M. Co., supra; Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *Humphrey's Ex'r.* v. *United States*, 295 U. S. 602; *Sears, Roebuck & Co.* v. *Federal Trade Commission*, 258 Fed. 307.

CONCLUSION

It is respectfully submitted that the decree of the court below, affirming and enforcing the order of the Board, should here be affirmed.

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CHARLES ELMORE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. 469.

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

MOTION OF PENNSYLVANIA GREYHOUND LINES, INC., AND GREYHOUND MANAGEMENT COMPANY FOR LEAVE TO FILE BRIEF AS AMICI CURIAE, AND BRIEF OF AMICI CURIAE.

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WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
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vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE.

May it please the Court:

The undersigned, as counsel for Pennsylvania Greyhound Lines, Inc., and Greyhound Management Company respectfully move this Honorable Court for leave to file the accompanying brief in this case as *amici curiae.*

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Supreme Court of the United States

OCTOBER TERM, 1936.

No. 469.

WASHINGTON, VIRGINIA AND MARYLAND COACH COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

BRIEF OF PENNSYLVANIA GREYHOUND LINES, INC., AND GREYHOUND MANAGEMENT COMPANY AS AMICI CURIAE.

This cause seeks a review and reversal of the decision of the Circuit Court of Appeals of the Fourth Circuit, rendered October 6, 1936 (85 F. (2d) 990), which sustained an order of the National Labor Relations Board, ostensibly made in accordance with the Act of Congress of July 5, 1935, known as the National Labor Relations Act.

The present brief will address itself in the main to the constitutionality of the Act, omitting the discussion of features dealing exclusively with the controverted facts of the particular case.

With reference to the latter, however, it may be stated that nothing more than the most cursory review of the present record is required to demonstrate the arbitrary powers inherent in the administrative features of the Act. In fact, the instant case provides a typical illustration of certain of the features in which the validity of the Act is questioned in the later argument.

SYNOPSIS OF ARGUMENT

I.

STATEMENT.

Enumeration of ground upon which constitutionality of National Labor Relations Act is challenged.

II.

The Act is not within the Commerce Clause and violative of the Tenth Amendment.

(a) Act aimed at regimentation of country's industry as a whole with regulatory control vested in National Government.

Schechter Poultry Corp. vs. United States, 295 U. S. 495.

United States vs. Butler, et al., 297 U. S. 1.

Rickert Rice Mills, Inc. vs. Fontenot, 297 U. S. 110.

(1) Reports of Committees of House of Representatives and Senate on Act.

Senate Report 573 (74th Congress, 1st Sess.), pp. 18, 19.

House Report 1147 (74th Congress, 1st Sess.), pp. 3, 4.

(2) Cases relied on by Government distinguished.

Swift vs. United States, 196 U. S. 375.

Stafford vs. Wallace, 258 U. S. 495.

(b) Act an experiment in socialization of industry as contradistinguished from a regulation of commerce.

(1) Broadly stated regulations of relation between capital and labor are subjects of local cognizance.

(2) Except in limited field of its delegated powers Congress may not assume power last stated without violation of Tenth Amendment.

(3) Provision of Act indispensable to accomplishment of obvious purpose confirmatory of violation of Constitution last stated.

Retirement Board vs. Alton R. R. Co., 295 U. S. 330, 374.

Adair vs. United States, 208 U. S. 161, 178.

III.

The Act violative of the Fifth Amendment.

(a) Correspondence of limitation imposed by Fifth and Fourteenth Amendments.

Louisville Bank vs. Radford, 295 U. S. 555.

Retirement Board vs. Alton R. R. Co., 295 U. S. 330.

(b) Right and liberty of contract under Fifth Amendment.

Allgeyer vs. Louisiana, 165 U. S. 578.

Adkins vs. Children's Hospital, 261 U. S. 525.

Adair vs. United States, 208 U. S. 161.

Coppage vs. Kansas, 236 U. S. 1.

Hitchman vs. Mitchell, 245 U. S. 229.

(c) Application of principles of cases last cited demonstrates unconstitutionality of Act.

(d) *Texas & N. O. R. Co. vs. Brotherhood*, 281 U. S. 548, distinguished.

(e) Provisions of Transportation Act provide no justification or support for unconstitutional provision of Labor Relations Act.

(f) Erroneous assumption by administrative representatives of Government that "organized labor" and "collective bargaining" are of identical import.

(g) Case presently before court presented no question of collective bargaining.

(h) Only question here presented constitutional right to hire and discharge.

IV.

The Act violative of Fifth Amendment.

(a) Constitutes an unlawful delegation of legislative authority.

(b) Provisions of Act unfair, unreasonable and oppressive.

(c) Review of Act's provisions.

(d) Review of applicable decisions.

Hitchman vs. Mitchell, 245 U. S. 229, 250-251.
Carter vs. Carter Coal Co., 298 U. S. 238, 310.

V.

Act violative of Article 3, Section 1, of the Constitution and of the Seventh Amendment.

(a) Labor Board vested with judicial powers.

(b) Powers granted impinge judicial power of courts.

(c) Judicial powers vested in Board not essentially dif-

ferent from powers of court of equity respecting mandatory injunctions.

(d) Powers to cause reinstatement of discharged employee with back pay are exercise of common law judicial powers.

(e) Matters last stated contravene law of Seventh Amendment in denying trial by jury.

VI.

Act not aided by application of severability clause.

(a) Constitutes a code, none of the provisions of which may be eliminated without destroying legislative plan.

(b) The provisions regulating relations of employers and employees with the prescribed administrative institution the crux of the Act's scheme without which it would be purposeless.

Carter vs. Carter Coal Co., supra.

The Employer's Liability Cases, 207 U. S. 463.

I.

STATEMENT.

For preliminary purposes it may be stated the National Labor Relations Act is indicted upon a variety of counts amongst which the following may be summarily enumerated, viz.:

1. It is nothing more than an incident or part of a legislative policy aimed at the regimentation of the industry of the country as a whole, with the centralization of con-

trol in the National Government, thus violating the Tenth Amendment.

2. While ostensibly characterized as a regulation of commerce, the characterization arises to little more than an adroitly worded pretense, failing to conceal the underlying purpose of the complete socialization of industry, similarly violating the Amendment last stated.

3. The Act, in various particulars indispensable to the consummation of its obvious purposes, is violative of the Fifth Amendment, in that it denies the right of freedom of contract—the right of the employer to hire and discharge and the correlative right of the employee to work or refuse to work for whomsoever he pleases.

4. Assuming argumentatively, the Act is susceptible of characterization as a regulation of commerce, its essential and indispensable provisions are arbitrary, oppressive and unreasonable, viz.:

(a) in the pronouncements of unfair labor practices;

(b) in proscribing what is ordinarily termed the "company union";

(c) in denying the right of the "open" while permitting the enforcement against unwilling employees of the "closed" shop;

(d) the compulsory acceptance by minority employees of conditions of employment imposed by majority without the former's consent;

(e) in unlawfully delegating legislative powers;

(f) in conferring on the Labor Board created by its terms, the power of prescribing various arbitrary administrative regulations;

(g) in imposing on the employer all of the oppressive obligations prescribed by its terms while wholly omitting the imposition of any obligation whatsoever on the employees;

(h) in subjecting the employer to the administrative supervision of a super-authority, the exercise of whose functions necessarily subvert the loyalty and destroy the morale of the employees.

5. The Act unlawfully delegates to the Labor Board judicial power in so far as it confers authority to order the reinstatement of discharged employees with back pay, thus denying the right of trial by jury under the Seventh Amendment.

The various grounds thus alluded to will be considered in more detail in the following argument.

II.

The National Labor Relations Act Is Not Within the Commerce Clause of the Constitution and Is Violative of the Tenth Amendment.

The general subject thus indicated presents a dual inquiry calling for separate consideration.

(a) The Act is aimed at the regimentation of the industry of the country as a whole. Fundamentally, the subject thus suggested involves principles which have already been authoritatively determined by the decisions of this Court.

Schechter Poultry Corp. vs. United States, 295 U. S. 495.

United States vs. Butler, et al., 297 U. S. 1.

Rickert Rice Mills, Inc. vs. Fontenot, 297 U. S. 110.

That one of its main objective purposes was that stated in this subdivision is attested by the history of the enactment as well as the express policy indicated in the statement of such policy set forth in its first section.

The history of the Act requires no detailed comment. Broadly stated it was part of a newly conceived general policy assumed to provide a panacea for the financial and industrial ills which confronted the nation at the time. The policy indicated was manifested in a series of enactments obviously aimed at the regimentation of all industry and the centralization of dictatorial power in the National Government. As many of these contemporary enactments have already been considered by this Court, a detailed review thereof is not required.

In Section 1 of the Act under the heading "Findings and Declaration of Policy," we find the following:

> "The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operating of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.
>
> The inequality of bargaining power between employees who do not possess full freedom of association

or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries."

The language thus quoted would seem to remove the subject from the realm of serious controversy. While not conclusive, the reports of the conference committees to the respective branches of Congress are, at least confirmatory of the broad scope of the all embracing purposes indicated in the foregoing quotation. In the report of the conference committee to the Senate (S. R. No. 573, May 2, 1935), the following statements appear:

"But the Federal Government has power to prevent burdens upon interstate commerce that reach beyond the intent of those laws in regard to labor disputes, and it is intended in this bill to exercise the full constitutional power of Congress to prevent the described unfair labor practices, which have no extenuating social values operating in their favor." (p. 18.)

"In the case of *Appalachian Coals, Inc. vs. United States* (288 U. S. 344), Chief Justice Hughes wrote: 'The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fall, when unemployment mounts, and communities dependent upon profitable production are prostrated, the wells of commerce go dry.' This statement is a landmark of contemporary realism in regard to the commerce power. While this bill of course does

not intend to go beyond the constitutional power of Congress, as that power may be marked out by the courts, it seeks the full limit of that power in preventing these unfair labor practices. It seeks to prevent them, whether they burden interstate commerce by causing strikes, or by occurring in the stream of interstate commerce, or by overturning the balance of economic forces upon which the full flow of commerce depends." (p. 19.)

If further confirmation were required with respect to the intentions of the framers of this legislation, it is sufficiently attested by the course pursued following the enactment, by those charged with the responsibility for its enforcement. It would unduly extend the present brief to enter upon this subject in detail. It will suffice to state that the administrative organization provided by the Act's terms has assumed jurisdiction over local industries in a relatively large number of cases, many of which have come before the various Circuit Courts of Appeals. In attempting to sustain the jurisdiction in these cases, the representatives of the Government have had recourse to the stereotyped argument that whatever conditions are calculated to restrict the flow of commerce in its ordinary channels, or lessen the volume of that commerce, have been brought by the Act's terms under Federal jurisdiction, wholly regardless of the fact that the conditions challenged are incidents of strictly local industry, whose only effects on commerce are indirect and remote.

In the light of the considerations thus indicated, it is relatively clear that the enactment in question, by invoking a novel economic concept, was intended to extend Federal control to embrace all industry. In the attempt to sus-

tain this concept, reliance has been placed on the Stockyards and Packers Acts, the Grain Futures Act and other legislation of cognate character. If regard be had, however, to the class of cases of which *Swift vs. United States,* 196 U. S. 375, and *Stafford vs. Wallace,* 258 U. S. 495, are examples, it will be found that in their essential features they are *sui generis* and in no wise calculated to sustain the broadly asserted economic concept implicit in the terms of the present Act.

As still further confirmatory of the scope of the Act, allusion may be made to the fact it was admittedly an amplification of the terms of Section 7 (a) of the National Industrial Recovery Act, as supplemented by Public Resolution No. 44 (see House Report No. 1147, June 10, 1935, pp. 3, 4).

Tested in the light of these considerations, and applying the principles announced by this Court in determining the unconstitutionality of contemporary legislation of largely similar import, the Act here in question has clearly exceeded established constitutional limitations and is invalid accordingly.

The feature of severability of the Act's terms will be considered at a later point in the present brief.

(b) The Act is an experiment in the socialization of industry and is not and was not intended as a regulation of commerce, and is violative of the Tenth Amendment.

While the constitutionality of this Act is challenged on various grounds to be later considered, it is desired to preface the review of these special features by directing attention to the Act as a whole.

Its history is a matter of common knowledge. For years the great labor organizations of the country have concentrated their efforts on various schemes of legislation, all

of which have had the common purpose of making the industry of the country, to all practical intents and purposes, subservient to their demands. This has manifested itself in almost innumerable acts of legislation of both state and national character. It has similarly been reflected in the long series of decisions of our courts.

If it is reasonably apparent from the nature and terms of the Act, that while ostensibly aimed at the regulation of commerce, its real objective was something wholly separate and distinct from such regulation, it cannot be sustained as a constitutional enactment. The circumstance that the application of its provisions or the observance of its requirements may indirectly or remotely affect such commerce, would not sustain its legality under principles firmly established. It remains then to ascertain from the terms of the Act itself its real objective. In reaching the conclusion in this latter regard mere verbiage is not controlling if it is reasonably apparent that such verbiage had no other aim than the concealment of the real purpose of the enactment.

The subject of vital concern addresses itself to determining whether the Act of Congress in question is a mere recrudescence of efforts addressed at the accomplishment of a social or economic objective as contradistinguished from one immediately concerned with the regulation of interstate commerce.

In this field it may be broadly asserted without fear of serious contradiction that the general subject of the social and economic relations between capital and labor is one which addresses itself primarily to the jurisdiction of the states and that this jurisdiction may not be impinged by Congress without violating the provisions of the Tenth Amendment, excepting in the limited field of its delegated authority. That this is what has been attempted in the pres-

ent Act is quite clearly deducible from its terms.

It is emphasized by a variety of the Act's provisions to be later considered, which constitute indispensable and essential incidents of the entire scheme and without which that scheme would fail of consummation. While disguised under the alluring term of "collective bargaining," the real purpose regarded from a purely practical standpoint is the control of industry by organized labor.

In demonstration of what is thus stated it is only necessary to allude to a few of the more salient features of the Act's terms. According to its mandates, collective bargaining is to be made effective through the imposition of an arbitrarily imposed majority rule, wholly regardless of the nature or character of the undertaking or industry affected. The devious potentialities of the imposition need not be considered at this point. In the application of this mandatory requirement the minority of the employees, as well as any group of employees, are deprived of participation or representation with respect to matters in which their interests are immediately involved.

The rights of the employer are similarly disregarded in the circumstance that he is denied the privilege of voluntary bargaining with the minority employees, although the Act's terms begrudgingly extend him the privilege of hearing their grievances (Sec. 9 (a)).

The framers of the Act, apparently conceiving the impregnable status of labor unions, had as their ultimate aim the driving of all employees into the fold of such organization or as the alternative, wholly denying them any right of representation respecting the details of their relations with their employer or of their employment. As an incident of the entire scheme a so-termed National Labor Relations Board was created with powers and jurisdiction of

autocratic, if not positively despotic control. The details of this jurisdiction may for the moment be postponed. Summarized, its functions are addressed at regimenting employees in a collective bargaining unit; in vesting that unit with the sole bargaining power and forcing the exclusive recognition of this unit on the employer.

As elements in the scheme's effectuation are the restraints put upon an employee association and the latter's encouragement or support by the employer by Section 8 (2). In contrast with this is the provision of Section 8 (3), that where any labor organization, vested with the representative bargaining status, has been organized without the employer's influence or aid, no violation of the Act's terms shall result *if the employer, with the consent of the organization, shall force the minority to become members of the majority unit as a condition of their continued employment.*

Without adverting further to the specific provisions of the Act the matters thus far considered should demonstrate its main objective, which is not even adroitly concealed.

The paramount and controlling question, therefore, is whether the Act may be characterized as a regulation of commerce or as one primarily aimed at a social or economic experiment.

If it be argumentatively conceded that what is termed "collective bargaining" is a panacea for labor disputes which may interfere with the normal flow of interstate commerce, the inquiry immediately propounds itself whether in the present Act, such right has not been invoked and employed for purposes wholly foreign to any true conception of its implications.

While the whole thesis of the Act premises the avoidance of labor disputes for their tendency to interfere with the free and unobstructed flow of commerce, it will be noted

that Section 13 of the Act expressly recognizes the right of employees to strike. Taking the Act by its four corners, the conclusion is seemingly inescapable that its poorly concealed purpose was that of strengthening the power of the country's great labor organizations; that it addressed itself to the consummation of a plan conceived to render industry subservient to such labor organizations and thus to accomplish a much sought for innovation in the country's existing industrial system.

Looking through form to substance, the Act from the standpoint of a regulation of commerce, is little more than a poorly disguised pretense. An analysis of its terms leads to the conviction that it must be brought within the principles announced in *Retirement Board vs. Alton R. R. Co.*, 295 U. S. 330, 374, in which the following was stated:

> "We feel bound to hold that a pension plan thus imposed is in no proper sense a regulation of the activity of interstate transportation. It is an attempt for social ends to impose by sheer fiat non-contractual incidents upon the relation of employer and employee, not as a rule or regulation of commerce and transportation between the States, but as a means of assuring a particular class of employees against old age dependency. This is neither a necessary nor an appropriate rule or regulation affecting the due fulfillment of the railroads' duty to serve the public in interstate transportation."

In concluding the subject thus considered, we cannot do better than quote the following excerpt from the opinion of this Court in *Adair vs. United States*, 208 U. S. 161, 178:

> "Manifestly, any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate com-

merce among the States, must have some real or substantial relation to or connection with the commerce regulated. But what possible legal or logical connection is there between an employe's membership in a labor organization and the carrying on of interstate commerce? Such relation to a labor organization cannot have, *in itself* and in the eye of the law, any bearing upon the commerce with which the employe is connected by his labor and services. Labor associations, we assume, are organized for the general purpose of improving or bettering the conditions and conserving the interests of its members as wage-earners—an object entirely legitimate and to be commended rather than condemned. But surely those associations as labor organizations have nothing to do with interstate commerce as such. One who engages in the service of an interstate carrier will, it must be assumed, faithfully perform his duty, whether he be a member or not a member of a labor organization. His fitness for the position in which he labors and his diligence in the discharge of his duties cannot in law or sound reason depend in any degree upon his being or not being a member of a labor organization. It cannot be assumed that his fitness is assured, or his diligence increased, by such membership, or that he is less fit or less diligent because of his not being a member of such an organization. It is the employe as a man and not as a member of a labor organization who labors in the service of an interstate carrier. Will it be said that the provision in question had its origin in the apprehension, on the part of Congress, that if it did not show more consideration for members of labor organizations than for wage-earners who were not members of such organizations, or if it

did not insert in the statute some such provision as the one here in question, members of labor organizations would, by illegal or violent measures, interrupt or impair the freedom of commerce among the States? We will not indulge in any such conjectures, nor make them, in whole or in part, the basis of our decision. We could not do so consistently with the respect due to a coordinate department of the Government. We could not do so without imputing to Congress the purpose to accord to one class of wage-earners privileges withheld from another class of wage-earners engaged, it may be, in the same kind of labor and serving the same employer. Nor will we assume, in our consideration of this case, that members of labor organizations will, in any considerable numbers, resort to illegal methods for accomplishing any particular object they have in view.

Looking alone at the words of the statute for the purpose of ascertaining its scope and effect, and of determining its validity, we hold that there is no such connection between interstate commerce and membership in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employe because of such membership on his part. If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of its interstate business *only* members of labor organizations, or *only* those who are *not* members of such organizations—a power which could not be recognized as existing under the Constitution of the United States."

For the reasons thus stated the Act cannot be assigned to

an exercise of the power delegated to Congress under the commerce clause of the Constitution. As a social and economic experiment, it violates the provisions of the Tenth Amendment.

III.

The Act Is Violative of the Provisions of the Fifth Amendment.

Postponing for the moment specific features of the Act which will call for later consideration, it is desired to approach the subject indicated in the caption from a broader standpoint.

The limitations on Congressional power imposed by the Fifth Amendment are essentially the same as those imposed on the states by the Fourteenth Amendment.

Louisville Bank vs. Radford, 295 U. S. 555.

Retirement Board vs. Alton R. R. Co., 295 U. S. 330.

Implicit in the Amendment's terms is the right of liberty of contract.

Allgeyer vs. Louisiana, 165 U. S. 578.

It is true it was held in substance, in *Adkins vs. Children's Hospital,* 261 U. S. 525, that there was no such thing as absolute liberty of contract; that under certain circumstances the privilege of contract must yield to the public welfare, but notwithstanding, the right was the rule while the limitation on its exercise was the exception. With respect to conditions, in many respects similar to the subject-matter of the Act here involved, it was held that legislation restraining the liberty of contract was unconstitutional.

Adair vs. United States, 208 U. S. 161.

Coppage vs. Kansas, 236 U. S. 1.

Hitchman vs. Mitchell, 245 U. S. 229.

The application of the principles announced in the cases last cited clearly establishes the unconstitutionality of the Act in question. Other cases attesting the same result will call for consideration at a later point in the present argument.

In the relatively large number of proceedings inaugurated by the Government in the attempted enforcement of this Act, it has been broadly asserted that the question of its constitutionality is foreclosed by the decision in *Texas & N. O. R. Co. vs. Brotherhood*, 281 U. S. 548. The contention in this regard has been sustained in certain of the decisions rendered by the lower courts. Nothing more than the most cursory consideration of the statute involved and the issues presented in the case cited is seemingly required to demonstrate that the claim with respect to its finality in the instant case, is wholly untenable. The case arose under the 1926 Amendment to the Railroad Act. (44 Stat. Ch. 347, p. 577.) It had its inception in a Bill in Equity filed by the respondent in the District Court to enjoin petitioner from certain acts asserted to have been inaugurated by petitioner in an attempt to coerce its employees and prevent their exercise of rights prescribed by the statute's terms. On preliminary hearing the Court determined the provisions of the statute had been violated and granted a temporary injunction restraining the petitioner from the continuance of such violation. The terms of the injunction order having been disregarded, contempt proceedings were instituted with the result of petitioner's being ordered to purge itself of the contempt or be subjected to a fine.

The terms of the order last mentioned were carried into the final decree. On appeal to the Circuit Court of Appeals, the decree was affirmed, and the cause thereupon brought to

this Court for review upon certiorari. The suit invoked rights asserted under Section 2 (3) of the Act as follows:

> "Representatives, for the purposes of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

Briefly stated, the facts disclose that respondent had been designated by the employees of petitioner as the latter's representative; that it had been recognized in its representative capacity in pending negotiations involving various phases of the working conditions; that negotiations had proven unavailing and the offices of the Mediation Board prescribed by the Act had been invoked. Pending the decision of the last named tribunal it was shown that petitioner had, in various ways, attempted to nullify the efforts of the Brotherhood by coercive measures intended to compel withdrawal from that organization, promote membership in what for brevity may be termed a company union and to recognize exclusively the latter as the sole bargaining agency for the employees. Incidental to the accomplishment of the purpose last indicated it was shown that petitioner had discharged various of its employees by reason of their affiliation with the Brotherhood.

In the situation thus indicated, it was held by this Court that the case did not present the right of an employer to hire or discharge and in consequence that the principles announced in *Adair vs. United States* and *Coppage vs. Kansas, supra;* were inapplicable. An examination of the brief filed by counsel for the Brotherhood in this Court discloses that

what was held by the Court as above indicated, conformed to their contention.

The decision of the Court, apart from the feature already mentioned, was rested on the propositions that (1) the right of collective bargaining was an inherent constitutional right on the part of the railroad employees independent of the sanction in the statute's terms; (2) the recognition of this privilege by the statute violated no constitutional rights of the employer; and (3) the prevention of labor disputes in transportation was within the regulatory power of Congress under the commerce clause. Aside from the matters thus indicated, it was held that where rights were sanctioned by the mandate of Congress, appropriate relief against the violation of those rights might be invoked at the hands of the courts. The recognition of the rights thus mentioned with the express qualification that the issue was not concerned with the constitutional right of the employer to hire or discharge, clearly discloses that the case turned on the facts establishing what for brevity we may term fraud, coercion or undue influence in the selection of representatives for collective bargaining purposes.

Before leaving this branch of the case, argument is hardly required to demonstrate that the provisions of the Transportation Act, as already quoted are entirely dissimilar to those here involved and the determination of the constitutionality of the former has relatively little bearing in determining the validity of the present Act.

If it be assumed that the decision in the Texas case forecloses inquiry with respect to the regulatory power of Congress in certain aspects of the relation between employer and employee in interstate commerce, it by no means follows that the exercise of that authority is unlimited and may

transcend all constitutional limitations. If it further be assumed that the power being conceded, the means for its effectuation are to be determined in the exercise of legislative discretion, it must not be overlooked that the exceptions to the principle are as well established as the principle itself. These last will be later considered in the present argument.

The basic and, to our minds, fundamental error upon the part of the Labor Board as well as the Government counsel in the administration of the present Act, appears in the gratuitous assumption that the terms, "labor organization" and "collective bargaining," are synonymous. In other words, concretely expressed, if an employer, confronted with the presence of one or more labor agitators, whose proclivities are too generally known and understood to require detailed comment, honestly, and with no ulterior purpose beyond that of avoiding trouble, discharges the parties fomenting the agitation, his action is at once challenged as an unfair labor practice and an interference with collective bargaining even though no question of collective bargaining is in controversy. So far as our observations have extended, this has been the situation presented in many of the cases brought before the Board in which the results have been uniformly foreordained.

In concluding on the broader phases of the constitutional question, it is contended that in a situation such as that presented in the instant case, no question of collective bargaining is presented; that the resultant action of the Labor Board as sustained by the Court in the decision under review is without ground or basis so far as collective bargaining is concerned and that the only substantive claim which can be spelled from the record must be rested on the discharge of an employee on the ground of union affiliations. The constitutional right in this regard is attested by the

Adair, Coppage and Hitchman cases, *supra*, which have never been overruled.

IV.

THE ACT IS VIOLATIVE OF THE FIFTH AMENDMENT. IN ITS ESSENTIAL PROVISIONS IT CONSTITUTES AN UNLAWFUL DELEGATION OF LEGISLATIVE AUTHORITY. ITS PROVISIONS ARE UNFAIR, UNREASONABLE AND OPPRESSIVE.

As the subjects thus indicated are in many respects closely related, and have received common consideration in many of the cases, they will be here treated together.

In approaching their consideration a brief excerpt from the opinion of the Court in the Adair case, *supra*, will elucidate the general principle involved.

> "While, as already suggested, the rights of liberty and property guaranteed by the Constitution against deprivation without due process of law, is subject to such reasonable restraints as the common good or the general welfare may require, it is not within the functions of government—at least in the absence of contract between the parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employe to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such em-

ploye. It was the legal right of the defendant Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization. In all such particulars the employer and the employe have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land." (page 174.)

In determining the validity of the present Act from the standpoint of the objections indicated in the caption of this subdivision, reference may be made to a number of its special provisions which constitute indispensable parts of the legislative scheme.

Section 1 of the Act, as already noted, is the recital of its broad objective purposes. Section 2 defines various of the terms of the Act. Sections 3, 4 and 5 create the Labor Board, prescribe the terms of office of the members and other details which need not be reviewed. Section 6 reads as follows:

"The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe."

This is a clear delegation of legislative authority without prescribing standards for its exercise.

Compare: *Schechter vs. United States, supra.*

Section 7 covers the right of organization by employees for the purpose of collective bargaining and other purposes connected with their employment.

Section 8 prescribes what shall constitute "unfair labor practices." These last are enumerated in a series of sub-paragraphs which call for separate consideration. Sub-section (1) provides that it shall be unlawful to "interfere with, restrain or coerce" employees in the exercise of the rights expressed in Section 7. Sub-section (2) is as follows:

> "To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay."

It is self-evident the provisions thus quoted were intended to limit and restrict the exercise of ordinary constitutional rights on the part of both employers and employees. It is too clear for argument that the objective was the destruction of what for brevity may be termed the "company union" and thus inserting the opening wedge for the accomplishment of the broader purpose considered at an earlier point in this brief. The concession indicated in the proviso borders on the ludicrous and would not call for serious consideration were it not for the fact of demonstrating the motives underlying the entire scheme promulgated by the Act's terms. The question immediately propounds itself as to what constitutional power the imposition of any such limitation on the freedom of employers and employees may be assigned? It is a well known fact, of which the Court may take judicial cognizance, that the system of what we have termed com-

pany unions, has existed in many branches of industry for years. It is also equally well known that such unions have provided targets for the attacks of labor organizations. We are not here concerned with the charges and counter-charges of the controversy between the conflicting interests. The sole question, from the constitutional standpoint, addresses itself to determining what has already been indicated, viz., to what constitutional provision, authority of Congress to arbitrarily deny to employers the right of encouraging company unions and the corresponding right of the employees to become members of such unions may be ascribed.

While not strictly germane to the present argument, we have no hesitation in stating that the Labor Board, in repeated instances, has condemned company unions on the assumption of what has been gratuitously assumed as their tendency to impede collective bargaining. This has manifested itself in instances where collective bargaining was not involved; where the facts have disclosed nothing more than an attempt by labor agitators to inject themselves into an industry and the obvious purpose of the actors was to foment trouble and discontent.

The features last mentioned apart, however, it is asserted that the provisions of Sec. 8, Sub-section (2) constitute nothing more than an attempted arbitrary restriction on the liberties of both employers and employees and must be condemned accordingly.

Sub-section (3) is as follows:

> "By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII,

title 15, secs. 701-702), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made."

Inherent in this language is a double-barreled attack on the privileges and liberties of both employers and employees. The first words of the provision indicate it was intended to absolutely deny to employers the right to hire and discharge at will if the motive for such action was found in discrimination against an employee for affiliation with a labor organization. As the law now stands it must be conceded that such action is within the employer's constitutional rights with the single exception arising under the peculiar state of facts such as those presented in the Texas & N. O. R. Co. case, *supra*.

The second barrel in the attack on constitutional rights implicit in the language of the subdivision appears in the proviso. Summarized, this language means nothing less than an attempted authorization of the closed shop. If we may be pardoned for paraphrasing the language indicated, it means nothing more than that the employer, *with the consent of a labor organization*, may impose the requirement of membership in such an organization on his employees as a condition of their continued service. In short, the employer with the consent of the organization, may restrict the privi-

leges of his employees in respects otherwise condemned by the Act's terms.

In considering the effect of these provisions reference may be made to the language of the Court in *Hitchman v. Mitchell*, 245 U. S. 229, 250-251, in which it was stated as follows:

> "That the plaintiff was acting within its lawful rights in employing its men only upon terms of continuing non-membership in the United Mine Workers of America is not open to question. Plaintiff's repeated costly experiences of strikes and other interferences while attempting to 'run union' were a sufficient explanation of its resolve to run 'non-union,' if any were needed. But neither explanation nor justification is needed. Whatever may be the advantages of 'collective bargaining,' it is not bargaining at all, in any just sense, unless it is voluntary on both sides. The same liberty which enables men to form unions, and through the union to enter into agreements with employers willing to agree, entitles other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union. In the latter case, as in the former, the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make non-membership in a union a condition of employment, as the working man is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power."

The potentiality of these provisions immediately suggests

that what is termed a "consent" therein may, and likely will be translated into a demand, compliance with which on the part of the employer may be made compulsory.

Sub-section (4) denies the right of the employer to discharge an employee for filing charges or testifying in a proceeding instituted under the Act's terms.

Sub-section (5) prescribes in substance, that refusal to bargain collectively shall constitute an unfair labor practice under the Act's terms.

Here again the potentialities for the fomenting of trouble and discord involving as they do the arbitrary discretionary powers of the Labor Board, readily suggest themselves without the necessity of detailed argument.

Section 9 (a) provides as follows:

> "Representatives designated or selected for the purpose of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided,* that any individual employee or a group of employees shall have the right at any time to present grievances to their employer."

In principle no satisfactory distinction can be found between the provisions thus quoted and those appearing in what is popularly known as the Guffey Coal Act, considered by this Court in the case of *Carter vs. Carter Coal Co.,* 298 U. S. 238. In dealing with the labor provisions of the Act there in question, the Court stated as follows:

> "That subdivision delegates the power to fix maximum hours of labor to a part of the producers and the miners

—namely, 'the producers of more than two-thirds of the annual national tonnage production for the preceding calendar year' and 'more than one-half of the mine workers employed'; and to producers of more than two-thirds of the district annual tonnage during the preceding calendar year and a majority of the miners, there is delegated the power to fix minimum wages for the district or group of districts. The effect, in respect of wages and hours, is to subject the dissentient minority, either of producers or miners or both, to the will of the stated majority, since, by refusing to submit, the minority at once incurs the hazard of enforcement of the drastic compulsory provisions of the act to which we have referred. To 'accept,' in these circumstances, is not to exercise a choice, but to surrender to force." (page 310.)

Respecting the constitutionality of the provisions, the opinion stated as follows:

"And a statute which attempts to confer such power undertakes an intolerable and unconstitutional interference with personal liberty and private property. The delegation is so clearly arbitrary, and so clearly a denial of rights safeguarded by the due process clause of the Fifth Amendment, that it is unnecessary to do more than refer to decisions of this court which foreclose the question. *Schechter Corp. vs. United States,* 295 U. S., at p. 537; *Eubank vs. Richmond,* 226 U. S. 137, 143; *Seattle Trust Co. vs. Roberge,* 278 U. S. 116, 121-122." (pages 311-312.)

In a separate opinion rendered by Chief Justice Hughes, the following was stated with respect to the constitutionality of the labor provisions of the Act:

"The provision permits a group of producers and employees, according to their own views of expediency, to make rules as to hours and wages for other producers and employees who were not parties to the agreement. Such a provision, apart from the mere question of the delegation of legislative power, is not in accord with the requirement of due process of law which under the Fifth Amendment dominates the regulations which Congress may impose."

Section 9 (b) is as follows:

"The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof."

A clearer indication of purely arbitrary power is difficult to conceive. Illustrations of the possibilities in this regard with their far-reaching consequences on the rights of dissentient minorities, will readily suggest themselves without the necessity of detailed comment. Whether the revisory jurisdiction of the courts extends to the arbitrary discretionary powers exercised by the administrative body, is extremely doubtful under the Act's terms. As the question thus suggested is not germane to the issue here presented, it need not be further considered.

Section 9 (c) is as follows:

"Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives

that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertin* such representatives."

The words "utilize any other suitable method" provide a further illustration of the unlawful delegation of legislative authority without restriction on the discretionary power conferred. When it is considered that the representatives certified by the Board are the only parties with whom the employer may negotiate, under the Act's terms, the effect of the quoted language is susceptible of but one interpretation. This is particularly true when these words are read in the light of the legislative scheme considered as a whole.

Sub-paragraph (d) provides in substance, a record of the proceedings had under the last preceding subdivision shall be incorporated in the record submitted to the court, where an order of the Board is sought to be enforced.

Section 10 (a) provides as follows:

"The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

A literal interpretation of the exclusive power thus assumed to be created would seem to lead irresistibly to the conclusion that power was intended to transcend all legal limitations.

*So in original.

Sub-section (b) provides for the hearing by the Board on charges made before it, with the qualification that the "rules of evidence prevailing in courts of law or equity shall not be controlling."

Sub-section (c) regulates the taking and preserving of the testimony on any such hearing, as well as the requirement of findings of fact. In the event the charges are sustained, provision is made for the issuance by the Board of a cease and desist order. Incidental to the latter the Board is authorized "to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act." No more arbitrary authority could be conferred on an administrative body, lacking any prescribed standards by which its action is to be governed, other than that of its own conceptions of the proprieties of a given situation. The effect of the action contemplated in the language quoted cannot be otherwise than to inject the element of force, foment trouble, destroy discipline and otherwise seriously affect the morale of any industry. The further effect, as an unconstitutional delegation of judicial power, will be considered later in the present brief.

Sub-paragraphs (d), (e), (f) and (g) cover the provisions for review by the courts. Incidentally it is provided that in any review of the Board's orders, "the findings of the Board as to the facts, if supported by evidence, shall be conclusive." Whether the qualification last quoted was intended to impair the authority and jurisdiction of the courts, need not be here considered.

Sub-paragraph (h) provides as follows:

> "When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or set-

ting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the provisions of the Act of March 23, 1932."

This language was evidently included as an extra precaution against the possibility the Norris-LaGuardia Act might work both ways as a limitation on Federal jurisdiction.

Section 11 prescribes further details with respect to hearings conducted before the Board, including the right to examine all records of any industry against which charges are filed; the subpoenaing of witnesses, administration of oaths, the venue of such hearings, coupled with others conferring jurisdiction on the courts to require the presence of witnesses and their testimony before the Board with authorization of the power of punishment for contempt. These, and other details of like character need not be considered.

Section 12 provides for the punishment of any person interfering with the exercise by the Board, or any of its representatives, of the authority conferred by the Act's terms.

Section 13 is as follows:

"Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike."

Section 14 preserves the provisions of Section 7 (a) of the National Industrial Recovery Act; of Section 77B of the Bankruptcy Act and Public Resolution No. 44, in so far as the subject-matter of those several enactments are not covered by the present Act. Section 15 contains in usual form the severability clause.

The foregoing detailed review will serve the dual purpose of demonstrating not only the necessary effect of the statute in active administration, but also that its provisions

must be construed as contemplating the establishment of a complete code, all of the terms of which are essential and indispensable to the prescribed scheme. Apart from the special features already alluded to manifesting the oppressive, unreasonable and unfair impositions on employers, the subject may be approached from a broader angle. One condition of the Act stands out so conspicuously as to leave little room for doubt as to its single aim. It will be noted that while the most stringent regulations and obligations are imposed on employers (these last detailed under the caption of "unfair labor practice"), there is not in the Act's terms, from beginning to end, any corresponding regulation or limitation on the privileges of labor organizations. While employers are thus fettered and restrained by these most stringent and drastic limitations on the freedom of their conduct, the Act can be searched in vain for anything imposing any corresponding limitations on labor organizations. It will be observed that the most innocent violations of the Act's terms by employers may be made the subject of dictatorial proceedings and domineering exactments. On the other hand, the labor organizations are left free to have recourse to the whole category of customary coercive measures, directed, not alone at the industry, but also against the unorganized body of the employees. Equally conspicuous is the failure of the Act to invest in the Labor Board any jurisdiction to deal with matters of the character of those last indicated.

Finally, as the grand climax we find the provisions of Section 13 expressly reserving the right of employees to strike. Seemingly nothing further is required to demonstrate the Act's unconstitutionality.

V.

The Act Is Violative of the Provisions of Article 3, Section 1, and to the Seventh Amendment of the Constitution.

The subjects thus referred to are so far obvious from the framework of the Act and the necessary consequences in its operation as to require relatively brief consideration. That the Labor Board is a quasi-judicial tribunal, is hardly open to argument. That its functions exceed those ordinarily vested in a fact finding agency, is apparent. As respects the rights specifically granted, of ordering the reinstatement of discharged employees with or without back pay, the powers exercised are not essentially different from those of a court of equity in granting mandatory injunctions. The terms of the Act (Section 10 (a)), conferring exclusive jurisdiction on the Board could hardly be expressed in broader or more sweeping terms. The language employed is at least suggestive, if not indicative of a limitation on the power and authority of the courts. When added to this the further provisions excluding the necessity of observing the ordinary rules of evidence, and those prescribing finality to the findings of the Board supported by evidence, are considered, the attempted investiture of judicial power would seem complete.

The authorization of the reinstatement of discharged employees with allowances of back pay, clearly contemplate the exercise of judicial functions of purely common law character. The right of discharge is a common law right even where restricted by contractual undertakings subject, of course, to the ordinary common law consequences of liability in damages for breach of contract. The requirement of compulsory acceptance of undesired service transcends

one of the most elementary principles of equitable jurisdiction. The imposition of obligation for back pay (the far-reaching consequences of which in particular situations might prove disastrous), concludes an issue of common law cognizance without the right of jury trial prescribed by the Seventh Amendment.

VI.

The Severability Clause of the Act Is Ineffective in the Conditions Presented.

The subject thus indicated presents different aspects according as it is approached from the standpoint of the Act as a whole or from that of its special provisions. In the earlier discussion in this brief the Act in its broader features, taken as an entirety, was considered from the standpoints (a) of attempted regimentation of the industry of the country as a whole and (b) as an experiment in social economics. On either of the theories thus propounded it is clear the functions of the severability clause would be without avail.

Carter vs. Carter Coal Co., supra.

Compare: *The Employer's Liability Cases,* 207 U. S. 463.

It will doubtless be contended, however, that from the circumstance the Act has transcended in certain respects, the constitutional authority of Congress, it does not necessarily follow that it may not be sustained within the limits of that authority. This necessarily invokes the principle decided by the Carter case, *supra,* in which the criterion was thus succinctly stated:

> "Under the statutory rule, the presumption must be overcome by considerations which establish 'the clear

probability that the invalid part being eliminated the legislature would not have been satisfied with what remains.' *Williams vs. Standard Oil Co.*, 278 U. S. 235, 241, *et seq.*, * * *." (page 312.)

In considering this phase of the case many of the features already presented have appropriate bearing. These apart, however, in applying the criterion the question immediately propounds itself whether Congress would have enacted the statute in question but for the assumption of its applicability to industry in general. In this connection when it is recalled that the field of interstate commerce proper had largely been covered by earlier legislation, of which the Transportation Act, the Employer's Liability Act and the Longshoremen's Compensation Act are illustrative, it will be apparent there was relatively little left for Congressional regulation. If, however, the matter be resolved otherwise than as last suggested, the propriety of the terms of the Act from the standpoint of what for brevity may be termed as an exercise of the power of police, remains. It cannot be logically contended that the mandates of the Act in so far as they prescribe the rights and obligations of employers and employees and provide an administrative system for their enforcement can be segregated without destroying the foundation upon which the entire superstructure is rested. These last are the very crux of the entire legislative scheme. They constitute a code, each provision of which is indispensable to the code in its entirety. Remove the unconstitutional features and nothing of substance remains. For these reasons the severability feature of the Act is unavailing to save it from the consequences of its unconstitutionality.

CONCLUSION

Inherent in the subjects reviewed in the argument thus submitted are others of broader and deeper significance in their bearing on our existing constitutional system. It is confidently believed these will immediately suggest themselves without the necessity of detailed comment. The Act here considered cannot stand the test of constitutional principles so long established as not to be now open to doubt or controversy. It should be held unconstitutional accordingly.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 469.—October Term, 1936.

Washington, Virginia and Maryland Coach Company, Petitioner, *vs.* National Labor Relations Board.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

[April 12, 1937.]

Mr. Justice Roberts delivered the opinion of the Court.

In this case the petitioner, an operator of motor buses for the transportation of passengers and express for hire between points in the District of Columbia and in the State of Virginia, challenges the enforcement of the National Labor Relations Act against it as in contravention of the commerce clause and the Fifth and Seventh Amendments of the Constitution.

Pursuant to a written charge filed with the National Labor Relations Board by Local No. 1079 of the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, a labor organization, the Board issued a complaint alleging that the petitioner had discharged and refused to reinstate certain drivers and garage workmen because of their membership and activity in Local No. 1079 and that this constituted engaging in unfair labor practices affecting commerce within the intent of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the National Labor Relations Act.[1] The petitioner appeared specially and filed a motion to dismiss the complaint on constitutional grounds, and, without waiving its objections to the Board's jurisdiction, filed an answer substantially admitting the allegations of the complaint with respect to the interstate character of its business, admitting the discharge and refusal to reinstate the employes mentioned in the complaint, and alleging that its action was motivated by the employes' inefficiency and not affected by their membership or activity in the union. The Board overruled the objections to its jurisdiction, fully heard the case, received evidence offered by both parties, and at the conclu-

[1] July 5, 1935, c. 372; 49 Stat. 449; U. S. C. Supp. I, Tit. 29, §§ 151, ff.

sion of the hearing denied a motion to dismiss the proceeding on the ground that the evidence did not support the allegations of the complaint, except as to three of the twenty-one employes concerned as to whom the complaint was dismissed for lack of evidence. The Board rendered a decision setting forth its findings of fact and entered an order prohibiting the petitioner from discrimination against its employes based upon membership in a union or advocacy of collective bargaining and requiring the petitioner to restore eighteen of the discharged employes to their former positions with compensation for loss due to their discharge and to post notices to the effect that it would comply with the Board's order.[1]

Because of non-compliance with the order the Board filed a petition in the Circuit Court of Appeals for its enforcement. That court refused to disturb the findings of fact made by the Board, overruled the contentions as to unconstitutionality of the act as applied to petitioner and passed a decree enforcing the order.[2]

While the petitioner, in its specifications of error, attacks the holding of the Circuit Court of Appeals that the act as applied does not violate the Fifth and Seventh Amendments, the argument in brief and at the bar was confined to two propositions: first, that the act is an attempt on the part of Congress to regulate labor relations in all employments whether interstate or intrastate and as it is void as an attempted regulation of intrastate commerce the whole must fall because its provisions are inseverable; secondly, that the evidence does not sustain the findings and the Board committed substantial error in the exclusion of evidence.

First. No contention is made that the petitioner is other than an instrumentality of interstate commerce. It is engaged in interstate transportation for hire. Our decisions in *Texas and N. O. R. Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548, and *The Virginian Railway Co.* v. *System Federation No. 40*, No. 324, October Term, 1936, put beyond debate the validity of the statute as applied to the petitioner. The contention that the act on its face seeks to regulate labor relations in all employments, whether in interstate commerce or not, is plainly untenable. As we have had occasion to point out in decisions rendered this day the act limits the jurisdiction of the Board to in-

[1] 1 N. L. R. B. 769.
[2] 85 F. (2d) 990.

stances which fall within the commerce power and if the Board should exceed the jurisdiction conferred upon it, any party aggrieved is at liberty to challenge its action.

Second. The petition for certiorari made no mention of any claim with respect to the sufficiency of the evidence to support the findings. In the light of this fact the question is not open for decision here.[4] But, were this not so, we should not review the facts, since Section 10 (e) of the act provides that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive," and there was substantial evidence to support the findings.

This is not a case of alleged confiscation,[5] nor is it one where the Board lacked jurisdiction,[6] for admittedly the petitioner's activities are in interstate commerce. The complaint is merely of error in appreciating and weighing evidence. In the case of statutory provisions like Section 10 (e), applicable to other administrative tribunals, we have refused to review the evidence or weigh the testimony and have declared we will reverse or modify the findings only if clearly improper or not supported by substantial evidence.[7] The contentions respecting the rejection of evidence are not well founded.

Third. The specifications of error addressed to other questions are answered by the decision of this court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, No. 419, October Term, 1936, decided this day.

The judgment is affirmed.

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[4] *Alice State Bank* v. *Houston Pasture Company*, 247 U. S. 240, 242; *Helvering* v. *Taylor*, 293 U. S. 507, 511; *Clark* v. *Williard*, 294 U. S. 211, 216; *Morehead* v. *Tipaldo*, 298 U. S. 587, 605.

[5] Compare *St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38; *Baltimore & Ohio R. Co.* v. *United States*, 298 U. S. 349, 368.

[6] Compare *Crowell* v. *Benson*, 285 U. S. 22.

[7] *Florida* v. *United States*, 292 U. S. 1, 12; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73; *Del Vecchio* v. *Bowers*, 296 U. S. 280; *Acker* v. *United States*, 298 U. S. 426, 433, 434.